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THE LAW—A DIVINE BEQUEST*

AS A DEPARTURE from the usual pattern of a formal sermon, I have purposely omitted an announced text. I shall include an extended excerpt from the gospel of St. Mark as the chief topic of this sermon; its applications to the bench and bar will be ancillary to this important excerpt.

We meet today in perpetuation of a tradition now seven centuries old. The Red Mass is celebrated annually to invoked the wisdom and the aid of God the Holy Spirit for all members of the bench and bar during the current and coming terms of court. In lands where Christian tradition and ethics prevail, it is appropriate that those who argue, judge and administer cases at law under the influence of this tradition and according to these ethics should ask the blessing of Him Who is their author.

The wisdom, the love, the mercy and justice of God, His legislative concern for the fundamentals of man's individual and social life were revealed in His Son, Jesus Christ. Jesus made no distinctions among those He taught. His doctrine was applicable to all; it had the universality of appeal to the entire race and to all its classes, trades and professions. Many of your profession, lawyers, were among His listeners. It was the question of a lawyer that gave us the moving parable of the Good Samaritan, a parable and a term that have become inextricably a precise point of our Christian ethics from that

* Red Mass Sermon delivered by His Excellency, The Most Reverend Daniel J. Feeney, D.D., Bishop of Portland, in Augusta, Maine, October 13, 1957.

day to this. There are several incidents recorded in St. Luke's gospel of His debates with lawyers, proof that these clever men of the law were not unaware of the knowledge of law manifested by this young teacher.

From a book by a distinguished Chinese jurist, now a professor of law in this country, I quote a striking passage. "In fact, one of the most pleasant conversations that Christ had in His life on earth was one with a lawyer. When the Pharisees and Sadducees were reasoning together with Christ, the lawyer was listening. Finding that He had answered them well, the doctor of law asked Him which was the first commandment of all. His answer was: 'The first commandment of all is, Listen Israel; there is no God but the Lord thy God; and thou shalt love the Lord thy God with the love of thy whole heart, and thy whole soul, and thy whole mind and thy whole strength. This is the first commandment, and the second, its like, is this: Thou shalt love thy neighbor as thyself. There is no other commandment greater than these.' (Mark 12:29-30). 'Truly, Master,' the doctor of law commented, 'thou hast answered well; there is but one God, and no other beside Him; and to love Him with the love of the whole heart, and the whole understanding, and the whole soul, and the whole strength, and to love one's neighbor as oneself, is a greater thing than all burnt offerings and sacrifices.' (Id. 32-33.) It is worthy of note how intelligently he paraphrased and developed the meanings of the words of Christ, who, seing that he understood Him so well said to him: 'Thou art not far from the kingdom of God.' (Id. 34.)

"To my mind, this discourse laid the cornerstone of the philosophy of law, of the natural law which is of particular application to the human world. It was no accident that such an important teaching on law should have been delivered to a lawyer. It may be regarded as Christ's special bequest to the profession of Law, both for its own benefit and in trust for others." (Fountain of Justice, Wu, p. 159.)

I find the last words of this ample quotation from the Chinese jurist tantalizingly intriguing: Christ's bequest was

not only for the members of your profession, but it was "in trust for others." Who are the others? All mankind. It is not necessary to construct a syllogism to understand the argument of Dr. Wu. It is his contention that your profession is a trustee, a guardian, in the promotion of these two great laws of God, love of God and of neighbor.

You may well ask yourselves how you, members of a worldly profession, share in such a manner the Christ-strengthened injunction to love God and neighbor? With whom do you primarily deal? Is it not with man and his problems? It is not a piece of property that enters your office or appears before your bench for advice and judgment. It is not in abstractions that you deal nor in the physical laws of nature. No, the proper object of your concern is man, and man generally who in consequences of his hates, doubts, greed and crimes has lost both love of God and man. Yours becomes the high privilege to represent the injured in litigation, to vindicate the rights of the oppressed, and to defend within the framework of the prescribed judicial processes, those charged with the violation of the laws of the land. This is truly the practice of the divine law to love our neighbor.

In a recent address our own Chief Justice in two sentences succinctly summed up the purpose of a judicial trial. He said: "The purpose of a judicial trial is to ascertain the truth and to give justice between men or between man and his state. That is the first, indeed the only purpose, of court action." Is justice a discovery or the invention of man? Justice is of God, eternal in being, universal in extent and application. In its administration the members of bench and bar are as its priests in its temple. When you invoke it, argue for it, promote and administer it, you are practising Christ's second commandment: Thou shalt love thy neighbor.

You are concerned not only with the individual personality of man, but you spend much of your time in the study of the extension of man's personality into things material, property. Yours is the responsibility to protect, through proper legal

instruments, the titles and properties of man. Nobody knows better than you gentlemen how many friendships have been irretrievably destroyed, families broken up and set at hatred to one another over property claims. In your quest for justice on behalf of your clients, do not forget the bequest of Christ that you hold in trust for others; love of neighbor.

I think it must have been from such experiences that one of the American bar's greatest lawyers, through the law and its practice came to know and love man so much and bequeathed to us as in imperishable bronze such consecrated expressions as "with malice towards none, with charity for all"; "no issue of human liberty and the rights of man 'is settled until it is settled right'". His pride in his profession led him to criticize severely those members who fell short of its ideals in the words, "A moral tone ought to be infused into the profession which should drive such men out of it." The elevated moral tone that characterized Abraham Lincoln in his life as a lawyer has made him one of the glories of the human race. Somewhere he learned well the bequest of Christ.

The application of this concept of law and love by your profession requires that the lawyer be a student, not merely of cases, precedents, laws and principles, but also that he be a student of man. Ever in his mind should be the line of the poet "nothing human is alien to me". The developing machine age of the nineteenth century, the rapid strides of scientific knowledge and discovery in the first quarter of this century and the breathless leaps into the 'unknown become known' in our own day have been the work of man. He has been beneficiary and victim, but he has always remained man. New complexities have been created by his discoveries and he must ever remain in the center, surrounded by them. Those in the nobler professions and callings of life owe it as a duty to man to keep abreast of all these matters that concern man so much. The physician who does not study, attend medical conventions, read his medical journals will never be more than a plodding practitioner; he will contribute nothing to the fight

against disease and human weakness. The priest or minister who closes his books of theology and scripture after his seminary days will never be anything but a mouther of platitudes and texts that he memorized in his student days; he will not bring to bear on behalf of man the great teachings of Christ as they have been pored over and applied by the vigorous minds of the past and present. The professors of specialized subjects, if content in their own circle of limited knowledge, will never be anything but respectable mechanics; they will do little for man. And man is always here, not alien to us.

Let me quote from the American Bar Association Journal: " To say that he is learned in the law who has committed some or many of its rules to memory, who knows not history and philosophy and science and literature and jurisprudence is to give a poverty stricken meaning to an opulent, ancient phrase ". " No lawyer is justly entitled to the honorable and conventional epithet of ' learned ' if his learning is confined to the statutes and law reports. It is the province of the lawyer to be the counsellor of persons engaged in every branch of human activity. Nothing human must be alien to him."

In his studies the lawyer will learn, as says Dean Pound, " that laws are relatively simple things, but that law is complex. It involves a regime of adjusting human relations and ordering human conduct." This being true on the word of such an outstanding authority, the studious lawyer will seek the origin of law where all law originates, in God Himself. He will find himself at agreement with the Lord High Chancellor of England, Lord Kilmuir, who in his address to the American Bar Association in Westminister Hall this past summer declared: " There is a doctrine which we both share with a wider community even than that of common law . . . I refer to the doctrine of the law of nature." Quoting Lord Bryce, he continued, " the law of nature represented to the Romans that which is conformable to reason, to the best side of human nature, to an elevated morality, to practical good sense, to general convenience. It is simple and rational, as opposed to that

which is artificial or arbitrary. It is universal as opposed to that which is local or national. It is superior to all other law because it belongs to mankind, and is the expression of the purposes of the Deity or of the highest reason of man." Lord Kilmuir continues his own observations: "What we are seeing now in some parts of the world, is, I am convinced, a spontaneous expression of that timeless longing, inseparable from the human condition, for justice, for the acceptance and fulfillment of the requirements of natural law, which recognizes that man is born to die and has but a little time to fulfill himself and to care for those to whom he is bound by ties of kinship and love." These three men, recognized by you as scholars and philosophers in the law, Dean Pound, Lord Bryce and Lord Kilmuir, point the way to the better study of man and his problems by the study of the Author of man and man's law.

I like to repeat the laconic sentence of the late President Coolidge, himself a lawyer. "Laws are discovered, not made." This is true of all our natural physical laws. It has been made increasingly evident to us over the past generation by our discovery of laws for human relief and welfare. Many of these newly discovered laws have been discovered by workers in human affairs, but all have been reduced to language and interpretation by lawyers. Your studies and discoveries will make you ever more and more aware that you are administrators of Christ's bequest to the legal profession, the law of the love of God and man.

The great lawyers of the centuries among all peoples have been men of deep religious faith. No man in man's long history has attained greatness by mere adaptation to local and temporary circumstances. They have grown and influenced the world by their profound moral and spiritual convictions and nowhere, outside the ranks of the professional clergy, has a firmer and more lasting influence been exerted on mankind than by the dedicated and consecrated men of the law who have known and taught the enduring principles and truths that come only from the divine intelligence itself. They have

used the reason that God gave them to probe our human nature and to seek to enact into law those measures most conformable to our nature. The history of our common law is the history of able English and American jurists who have despised the fleeting appeal to passing will as found in the positivistic philosophy of law. They have been men who made their principle "*fiat justitia, ruat coelum*", let justice be done though the heavens fall. They have invoked His holy name; they have accepted His law; they have recognized His dominion. From the pagan Cicero, who, by his unbounded intellect rose above the paltry polytheism and paganism of his time to the appreciation of God's law, down through the years of the slow development of our common law to the present day, the true lawyer, the great lawyer, yes, the loving lawyer, has been a man of faith. I have observed it in my own experience and lifetime. My reading of history confirms it. Diffident though you be in this superficial and secularistic age, you yourselves know it to be true. It cannot be otherwise when you expend your talents on behalf of your fellow man. Let me summon again the eminent Chinese, Dr. Wu. Once he had come to the full possession of the Christian heritage, he became so enamored with our common law that he writes: "Whatever you may say of its defects which are incidental to all human institutions, there can be no denying that the common law has one advantage over the legal system of any country; it was Christian from the very beginning of its history." Why? Because men of faith made it so.

Gentlemen of the law, let me bring this sermon to a close with three vignettes drawn from men of the bar. Some twenty-five years ago, when I was parish priest in Presque Isle, Maine, the late United States Senator Arthur R. Gould, asked me to give him some explanation of the Catholic Faith. He was a religiously minded man, as I learned he called it a family heritage. He had no prejudices for, nor bias against any of the Christian denominations. He had done much reading and study and wished for professional instruction. Among

other stumbling blocks that he had found in his previous reading was the answer to the question: "What think ye of Christ?" He was not clear in his own mind what to think in those earlier years of study and reflection. One evening he recounted this period of doubt to me in these words. "I finally reached the stage where I had to decide about the divinity of Christ. Father, did you know Herbert Heath?" I answered, "No, but in my younger days I knew that he was a prominent lawyer of Augusta, also interested in politics." The Senator went on, "Yes, he did a lot of work for me. I had great respect for him. In my doubts about Christ, I asked him one day, 'Heath, what do you think of the divinity of Christ?' 'Gould,' he said, 'I wouldn't want a better case to take into court to prove.'" The Senator added, "That was enough for me." You see, he did not take the word of a professional theologian, scripture scholar or church historian. He took the word of a lawyer that, with the grace of God, eventually brought him to a deep religious conviction, that remained with him to his dying day.

The late Justice James B. Carroll of the Massachusets Supreme Court died in 1932. At the memorial services commemorating his life the late Chief Justice Arthur P. Rugg of the same court adverted at some length to the influence of religion in the life of Justice Carroll. Justice Carroll was an alumnus of the college of which I also have the honor to be an alumnus. Among the alumni this story became current after his death. As death approached, his parish priest visited him to give the consolations of religion and to administer the final sacramental rites of the Church. As an old friend of the dying judge, he betrayed some nervousness. Noting it, Judge Carroll said, "Don't be nervous, Father, I have lived my life for this day." What a noble sentiment for a man who as a lawyer and judge had seen so much of the poorer side of human nature, but who had never lost sight of his goal.

In late August of this year there died in Brooklyn a highly respected member of your profession. In reading the accounts

of his life and activities, it is hard to understand how, in a professional life of thirty years he was able to do so much for his fellow man in works of religion, charity, education, civic responsibility. The New York daily press and the local religious press of New York and Brooklyn gave much space to the Honorable Joseph B. Cavarallaro. Dying of a disease that made conversation difficult, one of his last communications was to a priest friend who visited him. Writing on a pad of paper he revealed his faith and philosophy in these words: "My business is to conform to God's will. Pray for me." He too had learned well the answer of Christ to the doctor of the law: love God and your neighbor.

Gentlemen, this is your heritage, to keep alive in a naughty world the great teaching of Christ by devotion to your principles and the constant remembrance that you are co-workers with Him who is the Author of all law.

Let us terminate with this humble prayer of the famous Dr. Samuel Johnson, prayer to be said before the study of law:

"Almighty God, the giver of wisdom, without whose help resolutions are vain, without whose blessing study is ineffectual; enable me, if it be thy will, to attain to such knowledge as may qualify me to direct the doubtful, and instruct the ignorant; to prevent wrongs and terminate contentions; and grant that I may use that knowledge which I shall attain to thy glory and my own salvation, for Jesus Christ's sake, Amen."

Nosse oportet, unde nomen iuris descendat. Est autem a iustitia appellatum: nam, ut eleganter Celsus definit, ius est ars boni et aequi. Cuius merito quis nos sacerdotes appellet: iustitiam namque colimus et boni et aequi notitiam profitemur, aequum ab iniquo separantes, licitum ab illicito discernentes.—D. (1, 1) 1, 1.

AMERICAN LAW IN NATIONAL ISSUES*

AFTER accepting the kind invitation of your Most Reverend Bishop to speak to you this morning, it was my good fortune to read a short history of your Diocese in the Standard Catholic Encyclopedia. From the date of its establishment in 1853,—the summary reads—the Covington Diocese, covering over seventeen thousand square miles, was rich in raw materials yet handicapped by lack of industrial development. Nevertheless, this diocese fashioned splendid traditions in its growth under "a clergy conspicuous for ability, learning and devotion to duty". Congratulations are due to your Most Reverend Bishop and the lawyers who arranged this "Red Mass", which continues those glorious traditions of faith and culture in the Covington Diocese.

It is good for us to be here. For judges, lawyers, and government officials need to withdraw occasionally from the busy routine of active practice and to retreat, as it were, to the quiet hilltop of prayer and contemplation. For only then can they gain a true perspective and insight into the present state of the law and appraise the essential necessities of government in our times.

We meet as understanding friends who share a mutual responsibility as architects and guardians of American law. Our solemn observance of this "Red Mass" continues an ancient tradition dating four centuries before the founding of our government. In those times, at the annual opening of the Courts, lawyers and judges were accustomed to attend the Votive Mass of the Holy Spirit to petition Almighty God, the author and source of all law, for Divine guidance in their deliberations. For centuries, lawyers have seen in the red vestments of the Mass a symbol of the flaming love of God for

* Sermon delivered at the Red Mass, the Votive Mass of the Holy Spirit, by the Right Reverend Monsignor Robert J. White, LL.B., J.C.D., Rear Admiral (CHC) U.S.N. Ret., in the Church of St. Agnes, Covington, Kentucky, September 21, 1957, under the auspices of The Catholic Lawyers Guild of the Diocese of Covington, Kentucky.

His children and the Divine inspiration of the Holy Spirit for those who truly seek to bring God's law into the affairs of men. The gospel of the Mass, taken from the New Testament, recalls again the promise of Christ to send the Holy Spirit who would abide with us and bring to us the gifts of wisdom and peace. The Red Mass, as it unfolds in prayers, liturgy, and music, reveals a majestic and sublime profession of faith and trust in Almighty God.

Now, in God's plan of life for men, the individual is *dependent* upon cooperation with others—not only for his peace and safety—but as well for the means of gaining the necessities of life and the development of his mental and moral faculties. This dependence is evident not only in the individual's necessary cooperation with the institutions of religion, the family, and social and economic society, but also in his necessary cooperation with law and government. Consequently dedicated men who conscientiously carry the heavy responsibilities of law and government may feel assured that God's blessing will be upon them.

Law in our time is as broad as life itself—a seamless web which weaves its influence through all the important areas of living—education, commerce, labor, and the mass media of communications. For proof of this, we need look no further than the present phenomenon of our times—an unprecedented assault upon the Supreme Court for decisions covering issues in these diverse areas. Such attacks reflect deep and wide cleavages in public feeling. Now criticism is recognized as one of the powerful safeguards of American democracy. However such criticism is valid only when it is rooted in honesty, fairness, and charity. Violence as a weapon of criticism or resistance must always be outlawed and condemned. If eternal vigilance be the price of freedom, then likewise a constant and willing acceptance of a Constitutional law enshrining a divine truth is the surest guarantee of the reign of law in this nation.

The final determination of these difficult issues will determine the law's function in such fundamental fields as the relation of Federal and State authority; the scope of the juris-

diction of the Legislature to investigate independent of judicial or executive delimitation; the law's proper balance between the protection of the individual's rights and the protection of the government itself against subversive threats; and the regulation of the evils of legal entities such as corporate monopolies or giant unions. All of these are practical and momentous problems affecting the lives of all Americans. Indeed, these problems pose questions the solution of which will test our intelligence and character and may even determine the durability of the democratic process in its power of peaceful persuasion through the force of law.

Now where the power of the government is lodged in the people—as it is happily in our nation—leadership is a matter of vital concern. Indeed, a critical period, such as ours, cries aloud for the sound leadership of honest and courageous men, trained in the law, broadened by a knowledge of history, and dedicated to the sound progress of law and government. For only such leaders can expose dangerous demagogues who rely upon hate, denunciation and threats in arguments devoid of logic and sometimes even lacking honesty. Certainly, no aid in the solving of these problems can be expected from those of faint heart who seek refuge in their intellectual caves, bemoaning the present in a longing for the past. Nor can we expect real assistance from selfish men who would measure the law's proper sphere by a yardstick of non-interference with their vested political or financial power.

Now our age might be characterized as " the quest for security ". In this period, our nation has written a notable chapter in social justice. Law has lifted labor from the slavery of economic bondage. The right to organize, to strike, to be protected from the physical hazards of employment, from the gnawing fear of unemployment, and from the specter of poverty in old age have given laboring men and their families new hope, and democracy is the better for it. This social progress was achieved by the moral power of public opinion through the peaceful sanction of law. Consequently, it is disheartening to read present disclosures which must shock all

true friends of labor. However, hasty restrictive laws upon labor *are not* the answer to these distressing revelations. Labor needs to be reformed, not destroyed.

However, individual union members can no longer delay in recognizing and in implementing the stern duty, *binding in conscience,* to participate actively in ridding unions of evil influences and firmly establishing honest and responsible leadership. The comparatively recent accumulation of huge union trust funds should, either by voluntary initiative or by law, be subject to such uniform accounting, supervision, and public scrutiny as the law now demands for securities and insurance trust funds. And finally, let all the wavering doubts of confusion be resolved in this firm conviction of all the American people, including labor, that no single monopoly shall ever be permitted to gain a life and death power over all transportation with the menacing threat of a tyrant more powerful than the American people.

Have we in our quest for security wandered away from the basic truth that democracy can prosper only when government functions *as the common effort of all its citizens in law and in justice?*

Now, if we study the complex of the causes of our present difficulties, it becomes plainly evident that we have fallen victim to the *uncertainty of confused thinking.* In one way or another, we have succumbed through indifference or inaction, to the prevailing schools of thought in education including higher learning which strips away from the philosophy of life and law the essential nature of man as a creature of God —morally responsible—endowed not only with civic rights but as well burdened with the corresponding duties of self-discipline in citizenship.

In such a vacuum, it is not surprising that a generation of youth now matured is so confused by an emotional appeal, essentially atheistic and communistic, that they profess that the material welfare of man is the only goal of living. With some, this nihilist philosophy which denies the reality of moral

duties has released an inflated ego. Feeling freed from Divine law, they indulge in the grossest libertarian excesses which spread misery in family life and fill the juvenile courts, orphanages, and even insane asylums.

The basic cause of this catastrophe is the evil which inexorably follows from the *uncertainty of confused thinking* about man, his relationship to God and to government.

For example, we have recently been shocked by the defiance of a group of young people in the face of the Government's considered refusal to allow them to be used as pawns of Communist governments in Russia and China. They chose to be paraded in an outward show of friendship while Communists conceal from their immaturity the dagger of death intended for this nation. The one or two who naively viewed their venture as a mission for America join the ranks of historical Don Quixotes. As to the others who discount their American citizenship in sympathy with Communism—we can only view them as victims of the prevailing *uncertainty of confused thinking.* We might pass over this incident but we identify the common denominator of their confusion with that of members of our military forces who voluntarily or under pressure betrayed their comrades-in-arms and even rejected their homeland and repudiated its citizenship. Beyond question we can count these young people too as victims of the Nihilism prevailing in modern education. Now they find themselves sinking in the morass of the *uncertainty of confused thinking.* It would be a serious error to think that this contagion touched only the uneducated. The shock of earlier disclosures of disloyalty and even treason among the well-educated, including university professors, illustrates the extent of the malignant blight which has fallen upon our nation through the *uncertainty of confused thinking.*

Even American law has felt the thrust of this Nihilism in the prevailing legal philosophy of life and government. Current decisions too often reveal this patent *uncertainty of confusion.* And this uncertainty is greatly increased by the con-

temporary cult of lengthy and unduly complex court decisions. Indeed, we suffer from a locust-like plethora of cross-current concurring and dissenting opinions which appear too often as solo exhibitions of vain judicial litterateurs rather than the sound decisions of judges who interpret the law in the light of history, logic, and basic principles.

During recent weeks the press has given many columns to the portrayal of cases involving criminal charges of libel and corporate commercialized obscenity. Our courts have been culpably reluctant in failing to enforce laws aimed at these moral evils. With a seemingly frenetic zeal for the protection of freedom of expression, including a neurotic concern for the future of art, courts have employed too often chameleon semantics to escape from enforcing laws aimed at the ugly rottenness of obscenity. In strange contrast, our American forefathers—through the common law and statutes—had no difficulty in understanding the meaning and the threat of this immoral contagion.

Two recent Supreme Court decisions affirming convictions of publishers of commercialized obscenity give some hope of a return to sound thinking. Yet the decisions were not unanimous and suffered from a diffusion of confusion. One justice would dissent from convicting for obscenity until after proof of resulting overt acts. Thus, he prefers the post-mortem autopsy of moral failures to the law's traditional and sound preventive measures against known moral evils.

We stress this aspect of the law's confusion because of a current notorious criminal trial for libel and obscenity in the kleig lights of Hollywood. The trial is of particular interest to us because of the nature of the legal defense. It asserts justification because it could produce a flood of current books and magazines which are "no more obscene", and further justifies its action by the test of contemporary "mores". Thus would the sensualists trade new lamps for old—"mores" for "morals". Ancient Greece, Pompeii, and Sodom and Gomorrah could testify that had they known the truths that were to their strength and survival, they would not have

traded "morals" for "mores". For such a defiance of the immutable moral laws of God brings certain degradation, destruction, and death. Yet confused thinking on this subject pervades American law. For example, the American Law Institute deserves great credit for monumental study of American law in several fields, such as Contracts, and Conflicts of Law. However, it deserves criticism not praise for its proposed Uniform Draft for a law on obscenity, which is needlessly complicated by elaborate and unnecessary exceptions. But more serious it would reject the moral law as the criterion of obscenity and would defer to the fashionable errors of "mores" and "science". Though admitting that public order depends considerably upon religion and morality, it blindly accepts the modern confusion by stating that "there is very little information as to the influence of obscenity on behavior". Thus American legal scholarship would trade "morals" for "mores" and reject the solid evidence of human experience that obscenity breeds vice which ultimately wrecks the nation's most valuable asset—character.

Tragically, this should come as no surprise to a lawyer who has followed the trend of legal writing and teaching. For two generations, we have witnessed the gradual erosion of a sound legal tradition based upon belief in God, His Natural Law, and basic moral principles. It is no sudden phenomenon but rather the poisonous fruits of false legal philosophies which taught that the basis of law and government is merely "a compact of force or utility", "a blind unfolding of a historical or social pattern" in the "pragmatic experimentation of expedience". It scoffs at the doctrines of natural rights, and would reduce the individual to a mere "ganglion for the benefit of the state or dominant group" and thus, reduce the individual finally to a mere pawn of the omnipotent godless state.

Now in fairness, we should acknowledge the sincerity of many followers of those sociological and realist schools of legal philosophy. They deserve credit for their part in securing the legal enactment of overdue social reforms. We agree with

them in their resentment of an earlier wrongful distortion of Natural Law to justify unconscionable rights of a status quo. We agree that postive law must change to meet new demands in changing times.

However, granting all that, we emphatically disagree with the basic error of those legal philosophies which reject the Natural Law and attempt to build a legal structure upon the shifting sands of a pagan materialism. Their baneful effects are evident not only in the present confusion of law but as well in the resulting breakdown of moral responsibility in such basic institutions as marriage and the home.

Happily we see hopeful signs upon the horizon. All thinkers agree that we are now passing through a period in which great numbers of people feel deeply the failure of materialism to bring order and peace into mens' lives. It is too early to appraise with finality the return of vast numbers to church worship, the revival of theology and religion in university curricula, and the vast church building and mission programs.

Happily law too has felt a re-awakening to the basic necessity of moral and spiritual values in legislation and government. For example we may cite the recent pilgrimage of American lawyers to dedicate a monument of gratitude on the English battlefield of Runnymede. There where the Magna Charta was wrested from King John in 1215, American lawyers renewed their profession of faith in the law as the symbol of the determination of men to be ruled, not by the arbitrary will of men, but rather by law and tradition. Moreover the past year has witnessed the two hundredth anniversary of the birth of Chief Justice Marshall. To honor his memory, Harvard University invited over eight hundred scholars to attend a convocation lasting several days to consider " Government under Law ". In a significant volume of the proceedings, the President of the University stated, " There have been few speeches made here that have failed to make an *appeal to moral principle* ". Time and again the conference stressed the value of government as a framework

of cooperation whose purpose is the individual's good under *Constitutionalism which is a moral precept.* These scholars were enthusiastic in expressing their allegiance to the truth that *" the criterion of goodness " in law and government is fundamental.*

Now such signs are truly hopeful. However, such professions of faith in moral " goodness " as the foundation of law and government are not enough. Their implementation demands a basic definition of *" moral "* not founded on transitory illusion, but rooted in the eternal truth. For it is idle to talk of moral principles detached from the changeless moral law which God has ordained for governments and for men. That moral law stands as the enduring rock against the shifting tides of any era. Men and even governments may deny, ignore, or defy it, but in doing so, court their self-destruction.

Truly then, there is an indestructible unity and integrity in belief in God and obedience to his moral commandments. Moreover, in His infinite wisdom, God has endowed men and governments with the fundamental Natural Law. This is the true criterion of goodness in law and in government and the ultimate standard of justice. For Natural Law reveals a fundamental order of good and evil, and rights and duties which human reason can discover. It ordains an order which binds the human will to act for the individual's necessary end as " man made in the image of God " and destined to eternal life with Him. It applies to governments as well as to men.

Only the re-establishment and dominance of Natural Law can lead us out from the dark shadows of uncertainty and confused thinking into the clear and certain light of God's Divine plan for men and for governments.

In that dedicated quest, may God grant to each one of us our prayer in this " Red Mass " for His enlightenment—promised to those who walk in His Law and in His Love. Then and only then can we face the future assured and unafraid, certain of our strength as a free nation truly dedicated to government under " God and the Law ".

SOME RECENT CONSTRUCTIVE WORK OF THE SACRED CONGREGATION OF RELIGIOUS*

"THE vision of a world at peace, the dream of a human family organized in collaborative unity under a universal law", has ever been a master-idea in the mind of Pius XII. We find it in many of his public pronouncements, varying in form according to the subject and the character of his audience. He invites the most advanced masters in the natural sciences, such as astronomy or geo-physics, to go beyond the recording and interpretation of observed phenomena to recognize the Creator, the Author of all order in physical nature. To jurists he points out the necessity of basing their science on the only foundation that can support it, the moral law, reflecting the order that derives ultimately from the nature of God. With persons of every trade or profession and from every class of society he is constantly on the alert to indicate the relation that their particular activity bears to the primary purpose of life, observance of the law of God, salvation of the human soul. Doctors, lawyers, scientists, journalists, merchants, insurance men, radio and cinema operators, tobacco manufacturers, candy-makers, dirt farmers—"*coltivatori diretti*" in the Italian phrase—workingmen, domestic servants, street-cleaners and countless other groups have heard him express not only a sympathetic understanding of their particular activity but also the challenge to conform it to the demands of universal order. Order—that is the keynote; order in the life of the individual, in the activity of his group, in the harmonious cooperation of that group with others for the common good.

* Address delivered by the Very Reverend T. Lincoln Bouscaren, S.J., Procurator General of the Society of Jesus, Consultor to the S. C. for the Propagation of the Faith and to the S. C. of the Council, at the nineteenth National Convention of The Canon Law Society of America, held at the Adolphus Hotel, Dallas, Texas, October 15-17, 1957.

In the field of international relations his appeal for unity and cooperation is constantly heard, even when the subject under discussion is a purely economic one, as when in May 1957 he spoke to the International Chamber of Commerce. In his address to the " Congress of Europe " on June 13 on the subject of European unity, he closed with these words: " May you succeed in preparing for the men of our times an abode more closely resembling the Kingdom of God, a Kingdom of truth, and love and peace ". The last words are almost exactly those of the Preface in the Mass of Christ the King.

Growth of the Mystical Body

When his appeal is directly supernatural—and this is particularly true when he speaks of the priesthood or the religious life—this idea of peace and unity under law takes on a heavenly splendor. We are face to face with the reality of the Mystical Body of Christ. He evokes the enchanting vision of Christ the King as the personal leader in whom alone is the hope of freedom and union for mankind. If these words of Father Vermeersch, which I quote somewhat freely from a meditation on the Kingdom of Christ, are not the very words of Pius XII, they express a thought which is clearly discernible in his teaching. (Vermeersch is explaining the application of the parable with which that meditation begins): " Humanity sees in Christ the ideal of unity. The human race is disrupted. Born of a common father, living in the same world for the accomplishment of a common mission, humanity feels that it should be one immense family, united in spirit and in action. In spite of its scattered forces, the antagonism of conflicting interests, jealousies, hatreds, wars, it carries in its heart the regret for a lost unity. Unity is a lost heritage; it seems to be lost forever. Will there be found a human heart whose love can gather together the scattered and divided members of the human race, weld them into one organic body, send the same invigorating blood to its extremities and make it live with his own life? Yes, there is such a human heart; it is the heart of the new Adam, the heart of Christ." [1]

[1] Vermeersch, *Miles Christi* (Turnhout, 1933), p. 32.

The same thought is expressed by His Excellency, Bishop Wright of Worcester: "Through the Church men become united with Christ, and through His charity diffused in their hearts they achieve a union with one another which cannot do other than produce unheard-of wonders in social reconciliation. In Christ, who is the Head of every man, all men find themselves united spiritually with one another; and so, by a truth as old as Saint Paul, the Church solves the social problem of the 'one' and the 'many'; 'for we, being many, are one body in Christ, and every one members one of another' (Rom. XII, 4, 5)".[2]

What have these thoughts to do with our subject? They put the work of the Sacred Congregation of Religious in its true light. Detailed juridical work consisting of norms, regulations, precepts and prohibitions could easily be misjudged and viewed with disfavor if it were seen apart from its inspiration and purpose. The master-thought of the Sacred Congregation of Religious is precisely the same as that of Pius XII. The Congregation has done its work often at his express command, always under his supreme guidance. Within its special field its aim, like his, has been to put fresh vigor into the religious life, to encourage a better mutual knowledge and cooperation between various institutes and between religious and the Hierarchy, to make the apostolate of religious more effective in the world of today. Order, progress, unity—these are the goals. Let us see some of the steps by which they have been approached.

General Congress, Rome, 1950

The General Congress held in Rome in 1950 had announced as its purpose the "appropriate renovation" of the states of perfection, that is, religious, societies of common life and secular institutes—"*accommodata renovatio*". The Italian formula contained the word "*aggiornamento*", a "bringing up to date".

[2] From an address of the Most Reverend John J. Wright, Bishop of Worcester, at Holy Cross College, May 17, 1950.—*The Catholic Mind,* Vol. XLIV (1951), p. 108. Our opening quotation was from the same address.

Profound changes in the law were not contemplated, and no changes have been made. The Code of Canon Law itself had provided an " appropriate renovation " of the law for religious, crystallizing the results of a long period of evolution. It had also defined the juridical status of the societies of common life. The Constitution, " *Provida Mater* " of 2 Feb. 1947 had recognized secular institutes as a true state of perfection distinct both from religious and from societies of common life. For religious, perhaps the most significant modification of the law was the Apostolic Constitution, " *Sponsa Christi* ", of 21 Nov. 1950 (almost the eve of the Congress), on the cloister of monastic nuns, the federation of monasteries and monastic work.

But while the Congress did not forecast or in fact originate any revolutionary changes in the law, it provided opportunities for study and discussion which later produced some minor legal provisions. These were directed chiefly toward two objectives: first, the renewal of the religious life itself, and secondly the fostering of mutual understanding and cooperation between various institutes, and between religious in general and the other members of the Church.

There was much speculation as to what was meant by that " *aggiornamento* ", or " bringing up to date ". In what respect did the religious life need to be adapted to the conditions of the modern world? A Carmelite Father put it very well in a paper which he contributed to the Congress. There are, he said, three possible criteria for this adaptation. The first, which is absolutely to be rejected, would be the idea that the discipline and mortification of the religious life should be in some way relaxed in order to be more in accord with the love of ease and comfort which is so characteristic of our age. The second criterion is a true and very noble one, yet it would be a mistake to regard it as supreme; that is the needs of the modern apostolate. The third and supreme criterion is the interior life, which must always be preserved in its full vigor.[3]

[3] Gabriel a S. Maria Magdalena, O.C.D., in *Acta et Documenta Congressus Generalis de Statibus Perfectionis,* Vol. I, p. 136.

Adaptation therefore must go hand in hand with renovation. "The concepts of renovation and adaptation", writes Father Gallen of Woodstock College, "partly coincide. Renovation is to be conceived as the intensification of the entire religious life of every individual religious and of every institute. This implies a greater personal conviction, esteem and practice of the life of religious sanctity, a more universally active zeal, a deeper sense of responsibility, and a greater consciousness of the necessity of progress in the various works of the institute. In a word, renovation is a universal renewal of fervor. Renovation is more important than adaptation. Adaptation is change. A law, regulation, custom, practice, observance or manner of thinking and acting should be changed when it has become harmful or useless for the end for which it was intended, when a certainly better means can now be found, or when another means is demanded by the sound progress, necessities or problems of our age. The fundamental necessity for adaptation is that the world in which we live and for which we work has changed greatly in practically every aspect. . . . Adaptation is not reform, mitigation or relaxation. What it excludes is the principle of unswerving material conformity to everything done in the past. . . . It believes and emphasizes that there are immutables in religion, but also that not all things are immutable." [4]

Although adaptation has not been neglected, it is certainly renovation, the renewal and deepening of the religious spirit, that received the greatest benefit from the Congress. The Allocution of His Holiness which closed the Congress on December 8 was really a *Magna Charta* of modern religious life. It laid the basis for a deeper religious loyalty by refuting several specious theories that are actually being advanced in depreciation of the religious life; and this it did in the most authoritative and decisive manner.

The first of these errors concerns the relative position of the secular or diocesan and the religious *priesthood.* The re-

[4] Gallen, *Renovation and Adaptation,* in *Review for Religious,* Vol. XIV (1955), pp. 293, 294.

ligious priesthood is not to be considered as inferior or merely auxiliary to the diocesan priesthood, nor in any sense aloof from the Hierarchy of the Church. Nor does the exemption of regulars place them outside the pale of the apostolic priesthood. In the words of the Holy Father, "One would therefore be mistaken in appraising the value of the foundations which Christ laid in building His Church, if he should judge that the peculiar form of the secular clerical life as such was established and sanctioned by our Divine Redeemer, and that the peculiar form of the regular clerical life, though it be considered good and worthy of approbation in itself, is still secondary and auxiliary in nature, since it is not derived from Christ. Wherefore, if we keep before our eyes the order established by Christ, neither of the two special forms of clerical life holds a prerogative of divine right, since that law singles out neither form, nor gives to either precedence over the other."

This declaration of the Holy Father is in accord with a *postulatum* which was presented to the Vatican Council by a group of Bishops, which read: "The clergy of the Catholic Church is one and the same, as is also the priesthood established by Christ the Lord. Although one is called secular and the other regular, this does not change their substance, but concerns only the difference in their way of life, as some clerics freely embrace one way while others follow a different path. But whether they be regulars or seculars, all ecclesiastics have the same end, that is to serve the Church by prayer, example, teaching and working in the sacred ministry." [5]

As to exemption, the Holy Father says: "The exemption of religious orders is not contrary to the principles of the constitution given to the Church by God, nor does it in any way contradict the law that a priest owes obedience to his Bishop." [6]

The second false theory which might discourage religious vocations to the priesthood is the view which would include

[5] Cf. *Commentarium pro Religiosis,* Vol. XXX (1951), p. 337.

[6] *Acta Apostolicae Sedis,* Vol. XLIII, p. 28. The translations are from *Canon Law Digest,* III, pp. 121, 122.

the priesthood as such among the states of perfection. "It is a distortion of the truth", says the Holy Father, "to assert that the clerical state as such and as divinely established demands either by its very nature or by some postulate of that nature that the evangelical counsels be observed by its members, and that for this very reason it must be called a state of achieving evangelical perfection." [7]

It is of course perfectly clear that the Pope in no way derogates from the truth which he and many other Supreme Pontiffs have so much insisted on, that the dignity and functions of the priesthood itself demand of the priest that he strive for a high degree of virtue in his individual priestly life. This point was very clearly explained in a letter of the Secretariate of State to Cardinal Van Roey, Archbishop of Malines, refuting the contrary error which was being propagated by some over-zealous religious in recuiting vocations.[8]

On the third element of depreciation of the religious life, let me quote from an article by Father De Letter in *Review for Religious*. "A third symptom of contemporary undervaluing of the religious life is shown in the way the *motives* for entering the religious state are interpreted. It has been said that the cloister is a haven of peace for the timid who are afraid of the battles of life in the world—who are what is called escapists. Better pray for grace to be courageous and stay in the battle. That means, in plain language, that religious life is not for the courageous but for the faint-hearted. To this imputation the Holy Father takes exception in strong words. Generally speaking, this alleged reason for joining the religious life is false and unjust. The religious vocation demands great courage and devotedness. Proof of it is the history of the religious orders. Another proof is the work done today by religious in the missions, the ministry, hospitals and education. Most of the religious are fighting the battles of the Church not less than priests or laymen in the world." [9]

[7] *Ibid.*, pp. 122, 123.

[8] Letter of Secretariate of State, 13 July 1952; *Com. pro Rel.*, Vol. XXXII (1953), p. 48; *Canon Law Digest, Supplement,* under canon 124.

[9] De Letter, *Depreciation of the Religious Life,* in *Review for Religious,* Vol. XI (1952), pp. 37, 38.

Two other causes of contemporary depreciation of the religious life are mentioned in the Holy Father's Allocution. One is the preference for what he calls "eager external activity" over "the quest for the riches of the interior life". Of course his doctrine in substance amounts to this, that the two must go together, and that external works will not thrive truly unless nourished from within. Even the purely contemplative life still has its place and is a necessity for the Church.

The last modern grievance against the religious life is its lack of adaptation to modern needs. The Holy Father admits that this is partly true; and he gives three guiding principles for the necessary adaptation. There are, he says, three marks which seem to characterize our modern age: "amplitude in thought and discussion, unification of plan and organization, speed in execution". These, says the Holy Father, are equally characteristic of the Gospel; and he proceeds to illustrate them from the Letters of Saint Paul and the teaching of Christ. These are safe guides for the adaptation which is to be prudently conducted under the guidance of the Sacred Congregation of Religious.

It is obvious that the Holy Father's clear exposition of the truth under these various aspects concerning the religious life was as strong a stimulus as can well be imagined toward the healthy and vigorous growth of that part of the Mystical Body. And the healthy growth of the parts makes for the soundness of the whole organism.

Notre Dame Congress for the United States, 1952

The General Congress in Rome furnished the inspiration and model for the First National Congress of Religious in the United States, which was held at the University of Notre Dame August 9-12, 1952. The very notable number who attended (some two thousand religious of both sexes), the careful preparation of the program and the admirable order of the material arrangements are too well known to require comment. Two Cardinals, five Archbishops and a number of Bishops pro-

nounced the Congress a great success. Father Larraona, Secretary of the Sacred Congregation, in his closing address on August 12, praised the Congress as having contributed strongly to "a more fervent consecration to the life of perfection and its better adaptation to our times". The states of perfection, he said, are a fountain of strength for the sanctification of souls and for the apostolate. Unity and harmony are to be fostered. Segregation would be a mortal blow to unity and a contradiction of the Communion of Saints. Among the new manifestations of unity he mentioned: meetings of Superiors General in Rome, meetings of Major Superiors in various countries to discuss common problems and plan mutual cooperation; federations of monasteries of nuns; institutes of higher studies for women religious; national congresses in various countries like the one just concluded at Notre Dame.

Other National Congresses

A surprising number of national congresses have in fact been held. Father German Lievin of the Redemptorists, an official of the Sacred Congregation, gave an informal report on the progress in organization that had been made in various countries up to 1956. He put it in the form of a tour of the world, mentioning the countries in which either national congresses had been held or organizations of major Superiors had been formed, or both. Countries in which there were only prospects were omitted. Here is his list, or "itinerary": Bangkok (Thailand); Viet-Nam; Indonesia; Australia; Philippines; United States; Mexico; Venezuela; Ecuador; Colombia; Honduras; Nicaragua; Argentine; Brazil; Chile; Bolivia; Peru; Uruguay; Egypt; British South Africa; England; Belgium; Germany; France; Spain; Portugal—and back to Italy. The leaven of renovation, adaptation, mutual cooperation among religious is at work throughout the world.

Notable among others was the National Congress in Brazil in 1955, at which Father Larraona again represented the Sacred Congregation. Instead of lecturing as it were "*ex cathedra*", the congress applied itself to providing service.

One such service, for which in our country there would be no need, was to provide representation for religious with the government; another was to find chaplains for convents, a very necessary thing because of the scarcity of priests. Some religious institutes decided to open schools and other works in places where they are especially needed. It has been noted that the scarcity of priestly vocations in many countries of Latin America is part of a vicious circle. Ignorance and superstition create an atmosphere in which vocations to the priesthood can scarcely thrive; the scarcity of priests in turn makes it difficult to overcome the ignorance which is its cause. This is where the humble work of women religious can be an effective help to the priests, and eventually an influence for more priestly vocations.[10]

Control of Congresses

With the explicit approval of His Holiness, the Sacred Congregation has announced a certain control over congresses of religious and also over special courses dealing with their internal life or religious formation. Such conventions or special courses may not be held anywhere without consulting the Sacred Congregation of Religious beforehand. This Decree of 26 March 1956 is binding everywhere, both on religious and on local Ordinaries. There has been some discussion of its extent. Certainly there is no intention to forbid religious from explaining their own institute to their members. Regular courses in seminaries of religious are not restricted; neither are ordinary courses to religious women, even in theology or canon law; nor the usual spiritual retreats. But the prohibition does apply to congresses or conventions, "vocation weeks" for religious, and special courses dealing particularly with interior formation. The Sacred Congregation is rather liberal in granting permission. It merely requires to be informed in advance of the names of the speakers and the topics to be treated.[11]

[10] Cf. *The Catholic Mind,* Vol. LV (1957), p. 65.

[11] S. C. Rel., Decree, 26 March, 1956; *AAS,* XLVIII (1956), p. 295; *Canon Law Digest, Supplement,* under canon 487.

National Organizations of Major Superiors

The Sacred Congregation has also encouraged meetings of major Superiors of religious institutes in various countries. Here in the United States the first such meeting for institutes of men was held in Washington on Sept. 27, 1956. Of 190 who were eligible to attend, 95 were present. The Very Reverend Abbot Lawrence Vohs, O.S.B., of St. Bede Abbey, Peru, Illinois, acted as Chairman by appointment of Cardinal Valeri. His Eminence was very desirous that a permanent organization be formed, and this has since been done. The enumeration of other countries in which the same movement is at least begun would take us once more around the world with Father Lievin's review of the General Congresses.

Consultative Commission of Superiors General

It was the wish of His Holiness, Pius XII that there be established in Rome a Central Consultative Commission of Superiors General, consisting of two sections, one for pontifical institutes of men, the other for those of women. Both plans have been realized, but by somewhat different procedures. The Superioresses General were first in the field. The Sacred Congregation by order of His Holiness invited the Superioresses General of all pontifical institutes to an international Congress, which convened in Rome Sept. 11-13, 1952. Its chief purpose was to discuss and coordinate more efficiently the religious and technical training of women religious engaged in works of the apostolate. About 800 responded to the invitation, so large a number that on the first morning they had to transfer from the assembly room of the Sacred Congregation to the large "*aula*" of the Gregorian University. At the end they were received in special audience by the Holy Father. The permanent Roman Commission of Superioresses General, which was formed as a result of this Congress, consists of 20 who reside in Rome. The General Secretary is Mother M. Martin, Prioress General of the Ursulines of the Roman Union. The Commission has proved its usefulness, not only by supporting the establishment of the institute "*Regina Mundi*"

for the higher education of women religious, but also by less tangible but precious results. It provides a stimulus of inspiration and encouragement for women religious everywhere, a revival of apostolic zeal, a renewed sense of affectionate loyalty toward the Vicar of Christ.

The Commission of General Superiors of men had a more gradual evolution. On the 27th of January, 1952, three Generals met for luncheon, a Franciscan, a Jesuit, an Assumptionist. The subject of the conversation was the advisability of forming a Conference of Superiors General in Rome, as had been recommended at the 1950 Congress. It was decided to invite three more Generals for another luncheon meeting about a month later. After that, with the approval of Father Larraona, Secretary of the Sacred Congregation, invitations were sent to 65 Superiors General residing in Rome. All but 14, who had to be away from Rome on the appointed day, accepted and came. Father Larraona, who had also been invited, spoke on the benefits of such an organization. It would be a fine medium of communication between religious institutes and the Holy See, in both directions. It can serve as a consultative organ of the Sacred Congregation, and also give the Congregation itself an opportunity to give the Generals oral interpretations of existing law. It can help the Sacred Congregation to be more positive and constructive, not limited to receiving reports and grinding out dispensations, but going into action in a broader field, making personal contacts, promoting progress. The Commission can also stimulate a friendly cooperation with the Hierarchy on the part of religious who are engaged in the apostolate. In particular, continued Father Larraona, the Sacred Congregation has been working for the past eight years on a plan of Statutes for the religious, priestly and apostolic training of men religious; and it will welcome help, suggestions, criticism. (This project came to fruition only last year, in the Apostolic Constitution "*Sedes Sapientiae*" of 31 May, 1956).

This Commission of Superiors General meets four or five times a year. The President is elected; the member receiving

the next highest vote is Vice-President and First Councillor; four other Councillors are appointed by the President. Some samples of their activities: a discussion led by one of their number on the use of radio and television in religious houses; a study by a Procurator General who is a Doctor of Medicine as well as of Theology, on " Psychological and Medical Criteria for the Choice and Development of Religious Vocations ".

Worthy of special mention was a meeting at which Cardinal Valeri introduced Monsignor Ferdinand Baldelli, President of the "*Pontificia Opera di Assistenza*" (P.O.A.), erected by Pius XII in 1953 to promote relief and social improvement in Italy.[12] Monsignor Baldelli reported on the work being done in Southern Italy by the Hierarchy and pastors, but with the special help of groups of priests religious noted for charity and skill in social work. There were at that time (1955) twenty such missionary centers, in which sixty priests religious were at work (Franciscans, Capuchins, Jesuits, Passionists, Redemptorists, Marists, and perhaps others). These priests religious remain under the obedience of their Superiors, but are entirely dependent on the Bishops in their apostolate. They have no churches, but work among the people; they create no new organizations, but enliven those that already exist. A later report shows a growth to 31 centers in 27 dioceses, with 107 missionaries from 12 institutes (now including the Conventuals, Servants of Mary, Oblates of Mary Immaculate, Giuseppini, Priests of the Mission, Rural Catechists). Still later, in 1956, a chapel trailer was put into service. This up-to-the-minute apostolate is doing valuable work not only in rolling back the poisonous flood of communism but also in reclaiming fallen members of the Mystical Body.

Harmony Between Religious and the Hierarchy

In any study of the position of religious in the apostolate, questions regarding the adjustment of mutual rights between religious and the Hierarchy must necessarily arise. The Sacred

[12] Statutes, *AAS*, XLV (1953), p. 570.

Congregation of Religious is of course perfectly aware of these problems. The law of the Church is not so simple as to settle all possible conflicts by a few general principles. It is full of distinctions, limitations, exceptions, which have to be first clearly understood and then applied in a spirit of mutual charity and cooperation for the common good. Given the known consequences of original sin and their universality, it is always possible that in the adjustment of these multiple relations there may appear here and there on either side some imperfection in knowledge of the law's intricacies. It would seem that most mistakes are due to imperfect information. Father Gutiérrez, an official of the Sacred Congregation but writing as a private canonist, has a very complete study of the laws of the Code affecting these relations.[13] But in the official decisions one finds almost nothing indicating friction or conflict.

A minor instance is reported in the *Commentarium pro Religiosis* for 1953. A Bishop (we do not know in what part of the world) had decided to close all halls in which films were being shown under the auspices of religious, and to reserve such cinema performances to parish halls exclusively. The Sacred Congregation declared that, since the apostolate of the cinema is left open to religious by the common law, it is beyond the power of a local Ordinary thus by simple administrative decree to forbid the showing of moving pictures by religious. The Ordinary has the right of visitation according to canon 1382, and in case of actual and proven abuses he could take appropriate action.[14]

Another field in which conflict is possible is in recruiting vocations. We mentioned the instance where some religious in Belgium (it is not known who they were) in their overzealous quest of religious vocations were, it is said, turning young men away from the diocesan priesthood. This egregious abuse was publicly corrected. We hope it was only an isolated

[13] *Com. pro Rel.*, XXII (1941), pp. 28, 83, 133, 213, 305; XXIII (1942), pp. 30, 113, 292.

[14] *Com. pro Rel.*, XXXII (1953), p. 163.

case. The converse error is also possible. Any local Ordinary who would try to prohibit religious from speaking to young men about the religious vocation, or who would exert pressure upon them to that effect, would be going far beyond the rights given him by the law of nature or of the Church. We know of no such case having been brought officially to the attention of the Sacred Congregation.

Need we recall in this connection the admirable provisions of canon 608, "the canon of harmony"?

> Superiors should see to it that religious subjects designated by them, especially in the diocese where they live, willingly give their services, without prejudice to religious discipline, when their ministry is called for by local Ordinaries or pastors for the needs of the people, both in their own churches or public oratories and elsewhere.—Local Ordinaries and pastors in turn should willingly make use of the services of religious, especially those who live in their diocese, for the sacred ministry and especially in administering the sacrament of penance.

I think this subject does not call for further development. The Third Plenary Council of Baltimore [15] had already given eloquent testimony to the friendly spirit of cooperation then existing between religious and the Hierarchy. It has not diminished. Opportunities for its exercise are now greater than ever.

Religious Vocations

The problem of the scarcity of religious vocations is world-wide; in some countries it is critical. Formerly each country was isolated in its efforts to meet this problem. His Holiness, Pius XII, by a *Motu proprio* of 11 Feb. 1955, established the "Primary Pontifical Work for Religious Vocations". Its purpose is to coordinate the work by providing means of communication and information. It stimulates cooperation among various institutes toward creating a climate favorable to vocations, helps them to provide publicity and propaganda that will have a wider appeal, for example, films that are not limited to the work of a single institute. Some years before,

[15] *Acta et Decreta*, n. 86.

the same Supreme Pontiff had done the same for vocations to the priesthood.[16]

Federations of Monasteries

One section of the General Statutes for Monastic Nuns which were promulgated with the Apostolic Constitution "*Sponsa Christi*" deals with the establishment of federations of independent monasteries. The Sacred Congregation is prudently but actively promoting this movement. It is not a movement toward unification of government but simply toward friendly association and mutual assistance. Federated monasteries remain *sui iuris*, independent and autonomous, unless in exceptional cases, by agreement and with the express permission of the Holy See, this autonomy is slightly modified. Federation is always voluntary, never imposed. Some of the advantages to be derived from it are these: it facilitates the temporary assignment of a nun to another monastery of the federation for reasons of health; it may provide a common novitiate for several monasteries, and hence a better mistress of novices and better ascetical training than is usually possible with a very small number of novices; it permits the choice of a Superioress from one of the other federated monasteries, thus affording a wider choice; it facilitates both paternal and canonical visitations; finally the monasteries can help each other financially. There may at times be disadvantages; hence the Sacred Congregation proceeds judiciously.

Routine Work of the Sacred Congregation

It would be a mistake to suppose that all the constructive work of the Sacred Congregation is in the sphere of new, unusual or spectacular activity, such as promoting congresses, creating new forms of association, and the like. Day by day in the performance of its ordinary functions, it exercises a constant authoritative influence for order and progress.

[16] For priestly vocations, *AAS*, XXXIII (1941), p. 479. For religious vocations, *AAS*, XLVII (1955), p. 266.

Some years ago when the new formula of the Questionnaire for the quinquennial report of pontifical institutes appeared, it was remarked that it had the aspect of a complete and searching examination in the canon law of religious. The English translation of the 342 questions to be answered occupies 38 pages in print.[17] Far from being a mere formality, it is sometimes followed by admonitions to the religious institute on the basis of the replies received. One of them, deserving of spontaneous approval, was this: "If possible something should be done to correct the situation whereby the Sisters, exhausted by excessive labor, are apparently exposed to many difficulties and dangers and consequently fail in carrying out the religious life." In an article in *Review for Religious,* Father Gallen gives several similar examples, and also the text of several articles which the Sacred Congregation has caused to be inserted in constitutions of religious institutes in recent years, especially on the training of younger members and on the need of a continuation of studies even after a degree or certificate for teaching has been won.[18] Such work is not spectacular, but it is constantly keeping up the tone and spirit of religious institutes.

Two particular achievements remain to be mentioned. They are respectively known by two beautiful names: "*Regina Mundi*" and "*Sedes Sapientiae*".

"Regina Mundi"

"*Regina Mundi*", the pontifical institute in Rome for the higher education of women religious, arose from the movement of "appropriate renovation" initiated by the Congress of 1950. It was the chief reason which led the Sacred Congregation to call the meeting of Superioresses General in 1952, where the idea was discussed and unanimously approved. One can only imagine the difficulties that confronted such a pro-

[17] Cf. *Canon Law Digest,* III, p. 158.

[18] Gallen, *Practice of the Holy See,* in *Review for Religious,* XII (1953), p. 252.

ject: to organize an administration and faculty; to find and equip suitable quarters; to engage a sufficient number of well qualified professors for courses in the principal sacred sciences. All this has been done. The Institute began to function in the Marian Year, 1954. On the 11th of February 1956, the feast of Our Lady of Lourdes, the Holy Father by *Motu proprio* erected it as a pontifical institute with the right to confer degrees according to the statutes, and affectionately conferred on it the name "*Regina Mundi*".[19]

Its administration is in the hands of the Sacred Congregation of Religious with assistance from the Sacred Congregation of Seminaries and Universities, the Secretariate of State and the Vicariate of Rome. In 1957 the first students finished their third year and those approved received their degrees. Courses have been conducted in four languages, English, French, Spanish and Italian, in philosophy, fundamental, dogmatic, moral and spiritual theology, sacred scripture, canon law, history, liturgy, missiology, Catholic social doctrine, pedagogy, archaeology. The professors thus far have all been priests, and nearly all religious, though it is planned to have qualified women religious take part in the teaching, as they already do in the direction. This year there were 212 students from 29 different countries, Spain leading with 48, followed by the United States with 39, France 22, Canada and Brazil 9 each, and so on down to 1 each for Australia, China, Ecuador, Denmark, Indonesia, Israel, Lithuania, Hungary, Viet-Nam. These numbers indeed represent only an infinitesimal fraction of the women religious engaged in education throughout the world. The Sacred Congregation knows that similar work is being done for the higher education of women religious in other lands, and it invites cooperation and even affiliation of other institutes with "*Regina Mundi*". A far-reaching movement for the better spiritual and intellectual formation of women religious has been begun.

[19] *AAS*, XLVIII (1956), p. 189; *Canon Law Digest, Supplement*, under canon 488.

"Sedes Sapientiae"

The solicitude of the Holy Father and of the Sacred Congregation for the proper formation of religious destined for the priesthood has taken a different form, because many excellent institutions to provide this training already existed. "Nevertheless", said His Holiness in the Apostolic Constitution, "*Sedes Sapientiae*",[20] "the need has long been felt of some general ordinances, well coordinated and more complete, fortified by the authority of the Holy See and to be observed everywhere by all, in order that this important activity which concerns closely the good of souls may be assured of a successful development and completion through continuous and well directed effort." The plan was to provide for these existing institutions some general principles capable of bringing them to the highest perfection in the training of priests religious, and also statutes applying the principles in greater detail. This Apostolic Constitution applies to all the states of perfection, therefore to societies of common life and secular institutes as well as to religious, but only to those members who are being trained for the priesthood. Although it bears the title "Principles and General Statutes", only the Principles, stated with all the dignity and force of the Supreme Authority of the Church, appeared in the *Acta Apostolicae Sedis*. The General Statutes were mentioned as having been already approved, but they were published only separately in a booklet of the Sacred Congregation. Translations of the Latin text into various modern languages are being authorized by the Sacred Congregation, but all rights are reserved.

These Statutes are evidently the work of men thoroughly versed in sacred studies and imbued with the highest appreciation not only of the religious life but very specially of the priesthood as such and the spirit and qualities needed in the modern apostolate. Part III deals specifically with the three forms of training, religious, priestly, apostolic. It is impossible

[20] Pius XII, 31 May 1956; *AAS*, XLVIII (1956), p. 354; *Canon Law Digest, Supplement*, under canon 487.

to attempt here even a summary of its contents. Paging through it after several careful readings, one might perhaps select here and there some provisions of special interest. Let us offer a very few of them in brief paraphrase.

The students must cultivate virtues and zeal for souls, and be exercised in them (Art. 40, #2, 1°).

An important element in the priestly spirit is reverence, affection and loyalty to the Hierarchy of the Church, especially to its Head, the Roman Pontiff (Art. 40, # 2, 2°).

Just as canon 587, § 3 provides that the priestly training of religious may be imparted in a diocesan Seminary, so too the clerical training of diocesan priests can be given in religious Seminaries or Scholasticates (Art. 41, # 2, 2°).

As a means of adeqate pastoral training, immediately after completing their theology, the students shall receive a special formation for another year, during which under well qualified masters they are to cultivate the priestly virtues more assiduously, do a moderate amount of apostolic work and apply themselves to the study and practice of pastoral theology (Art. 48, # 1).

The last Title of all is "*De Ultima Institutionis Perfectione*"—on the final crown of the period of formation. Here the Holy Father warmly recommends, but does not impose, a last period of training which shall put the final seal on the young apostle after he has reached the age of about thirty and has had some personal experience of priestly ministries. This is what is commonly called the third probation, second noviceship, apostolic noviceship, year of perfection, or school of the affections. As we know, in several institutes both of men and of women, it has been in use for many years.

We must conclude: the work which the Sacred Congregation of Religious has done during these years under the leadership of the Vicar of Christ, has been truly constructive. May we not hope that it will hasten the time, which to our poor human vision still seems so remote, that blessed time when "there shall be one flock and one shepherd"?

T. L. Bouscaren, S. J.

SUCCESSION AND DELEGATION IN THE RULES OF LAW

TWO interesting points of law are supported by the Rules of Law of Pope Boniface VIII. These are succession in office and the power to delegate.

Succession in office with all the power contained in the office is now a settled point, but it owes its efficacy to the application of the Roman Law of inheritance. Hence, in Canon Law, while the possession of an office is not hereditary, transmission of power or authority is, in a sense, symbolized by the concept of inheritance. This leads immediately to the idea that power not actually contained in the office is not subject to transmission to successors unless specific mention is made of such transmission. However, in course of time, power conceded originally to incumbents in office was considered as conceded to incumbents by reason of their office and this power, too, was transmitted to successors. This is the basic reason why habitual faculties automatically pass to successors in office.

Canon 66, § 2 embodies the idea of succession in the matter of habitual faculties. Yet, it must not be supposed that such transmission is the transmission of ordinary power. The concept of delegation from the Holy See is clearly retained. Retained, too, is the restriction place on the transmission of faculties. Hence, faculties conceded because of unusual personal qualifications are not transmitted to successors in office. In a word, therefore, all ordinary power is transmitted to successors, delegated power may or may not be so transmitted. This depends entirely on the conditions of the original grant of delegated power determined by the law itself or by clauses in the rescript.

The power to delegate is not essential to the concept of an ecclesiastical office. There is, of course, no limit to the purely canonical power of the Pope to delegate, but the Supreme

Pontiff himself can impose limits and restraints on the power of others to delegate or establish conditions under which delegation can be validly made. The Rules of Law which support the concept of delegation are more concerned radically with the equivalent value of acts performed by ordinary and delegated power. By inference, however, the value of an act by a delegate depends on the power of a Superior to delegate.

Rule 46 is the Rule of Law which supports transmission of power to successors in office. Rules 68 and 72 support the value of delegated power.

These Rules will be expounded according to the following arrangement: explanation of the Rule; the pertinent canons; the application of the Rule to the pertinent canons; the application of the Rule to other canons.

I. Rule 46.—*Is qui in ius succedit alterius, eo iure quo ille uti debebit.*

A. *Explanation of the Rule.*

Rule 46 in Canon Law is founded on the Roman Law of inheritance. Two Rules in Roman Law supply the basis upon which Rule 46 in Canon Law rests. Both Rules are from the jurist Paul. Rule 117 says that in every case the possessor of goods stands as the heir.[1] Rule 177 says that whoever succeeds to rights or dominion uses the same right.[2] Several texts suggested by Bartoccetti [3] amplify these Rules and prove that succession in an heir yields the right to use some or every right of the testator.

Succession in Roman Law could be universal (*successio universalis*) or particular (*successio particularis seu singularis*).

Briefly, universal succession implied that every right and obligation of the testator came to the heir. He represented the testator in every way. Particular succession meant that

[1] D. 50, 17, 117: *Praetor bonorum possessorem heredis loco in omni causa habet.*

[2] D. 50, 17, 177: *Qui in ius dominiumve succedit alterius, iure eius uti debet.*

[3] *Le Regole Canoniche di Diritto* (Roma, 1939), p. 136.

only the right or rights transmitted in detail by will came to the heir. Thus, in universal succession every right to act and every obligation e.g., debts of the testator, was assumed by the heir. He could prosecute these rights and he was responsible for the obligations of the estate. Thus, too, in particular succession, whatever was transmitted in detail by will could be acted upon, but responsibility for the obligations of the estate was vastly reduced.

The full meaning of Rule 46 goes every bit as far as the law of universal succession in Roman Law. The full meaning of Rule 46, however, is not completely applied everywhere in the Code of Canon Law.

The canons of the first book of the Code do not require the full meaning of Rule 46. There are canons, however, in other parts of the Code which, at least, by implication demand the full meaning of Rule 46 [4].

It is a settled point in Canon Law that successors in office are bound by the legitimate acts of their predecessors. This is true also in the law of religious. The actual idea of physical succession upon the physical death of a predecessor is not necessary. In fact, where Superiors are elected for a specific time and then replaced by others, there is transmission of rights and obligations without the necessity of death or removal. In a practical way, the same transmission occurs with appointment of Apostolic Administrators, etc. All this is nothing more than universal succession in Roman Law. Hence, Ordinaries, Superiors, vicars econome, etc. cannot repudiate agreements, debts, etc. legitimately entered upon or contracted by their predecessors.

This point was already clear in the Decree of Gratian where a Bishop is reproved for trying to increase the obligation set down by his predecessor. Nothing more in the matter of obligations is to be added.[5]

[4] E.g., cc. 1527, § 2; 1536, § 1; 1538.

[5] C. 30, C. XVIII, q. 2: *Haec igitur omnia diligenter te examinare jubemus et si apud te evidenter ratione constiterit, quia tempore quo dedicatum est monasterium, conditiones superius positae convenerint, servari eas ex nostra auctoritate praecipimus, nec aliquid amplius exinde ab aliquo exigatur.*

It is understood, of course, that only the legitimate acts of a predecessor must be recognized and continued. Acts contrary to the law do not receive recognition and can be repudiated. This, of course, is law. Nothing is said here of possible damage which could result from repudiation where good faith obtained earlier.

Pope Alexander III is the authority for the repudiation of acts made illicitly by predecessors. His law is found in a decretal where he specifically states that acts performed without the required consent do not bind successors.[6]

Agreements which successors in office must recognize are pacts made in the name of the Church. Private agreements entered upon not in the name of the Church do not bind successors. Thus debts contracted for the Church cannot be repudiated. Debts contracted by the Superior for himself do not bind successors.

No more need be said about universal succession of Superiors in office.

The more frequent use of Rule 46 is in support of the legitimate use of power by a successor by reason of his succession. This is not really the same as particular succession in Roman Law. Hence, the strict idea of inheritance is not found in this aspect of Rule 46. What is meant here by Rule 46 is that whatever power is possessed by a predecessor his successor will enjoy the same power. There are some exceptions to this general statement but they are not founded upon the transfer of power belonging to an office. These exceptions are rather to be considered as personal privileges which cease at the death of the grantee.[7]

That a successor should possess the same power as his predecessor in office is based upon the continuity of the office itself. Once established in law with proper and sufficient power to fulfill its duties and discharge its responsibilities, an office continues without limit of time. This presumption of continuity

[6] C. 8, X, *de transactionibus*, I, 36.

[7] R. J. VII in VI°.

is found in all offices and is destroyed only by clear and definite contrary proof.

The office is distinct from its incumbent. The latter may die, resign or be removed. The office continues with a new incumbent. Hence, normally, power is given to the office not the incumbent. The incumbent exercises the power. Since the office remains the same while the incumbent in time is changed, it is in every sense reasonable that the successor use the same power as his predecessor. He is chosen to do the same work, to discharge the same duties and he has the same responsibilities. His means of exercising the same control must therefore be the same.

Now, it happens that at times more power is needed for particular situations or more power may be granted in recognition of unusual ability. This additional power is not assigned to the office which already possesses sufficient power for the normal need independently of the worth or ability of the current incumbent. It remains, then, to attach this power to the incumbent who possesses it for the length of the necessity or holds it in recognition of unusual ability.

Obviously, such additional power is not necessarily transmissible. That it can be transmitted to successors is not denied, but this transmission is due to the continued necessity. The reason for the concession because of unusual ability will naturally cease with the dissolution, physical or legal, of the incumbent.

Thus it is that some faculties which are really the concession of additional power will continue in successors because the necessity for their concession continues. Other faculties will cease.

Obviously, too, some presumptions must be established whenever additional powers are conceded. Is the presumption for continuation or for cessation? If it be kept in mind that these powers are conceded more to meet unusual situations than to recognize and reward unusual ability, it will be seen why the presumption for continuation should be preferred.

And, it is stated thus in the law that faculties do remain with successors in office unless the contrary be demonstrated. This will be studied later.

To return to the power of office.

Whoever possesses an office has full control within the meaning of law over everything which pertains to that office. Hence, for instance, laws can be enacted and these laws can be interpreted. Laws can be made and dispensations can be granted from these laws. There is little to be said in this matter beyond the obvious remark that full control of laws is not found where the incumbent is not the author of law. Whatever interpretation is given by the incumbent in the law of his Superior, and whatever dispensation is granted by the incumbent from this law is due to power not contained in the office itself, unless the law specially so provides. Additional power is therefore required before such acts are legitimate. However, as long as incumbents in office remain within the limits of their office sufficient power is at hand to interpret and dispense. A Bishop, therefore, needs no additional power to interpret his own law or to dispense from it. Chapters and Superiors in religious communities where jurisdiction exists likewise are competent to interpret and dispense from laws found in those same communities.

While legislators lower than the Roman Pontiff do not possess by their office power to interpret and, normally, to dispense from universal law, the Roman Pontiff himself is competent to do all this by reason of his supreme Pontificate. This is, fundamentally, a theological proposition and outside of the explanation of Rule 46.

If, then, the concept of continuity in office be joined with the knowledge of power contained in the office, it is readily seen that nothing whatever happens in the succession of incumbents but a transmission, full and sufficient, of the power contained in the office. This is the meaning of Rule 46.

The practical rule followed in law is to continue in effect certain powers not necessarily contained in the office itself.

This is only a practical arrangement, but it has the support of law, and is of long established usage.

One decretal will be sufficient to indicate the long usage of this arrangement. This is a decretal of Pope Alexander III.[8] In this decretal, the Pope says that delegation is transmitted to successors.

The various objections against the validity of Rule 46 as outlined and commented upon by commentators on Rule 46 mostly concern the use of this Rule in testaments and inheritance.[9] These need not be expounded. The solution of these objections is based upon the control of the testator over the legacies in his last will. Nothing of this is useful in the explanation of Rule 46 in the matter at hand.

It must, however, be mentioned that Rule 46 fails of application in the permanence of personal privileges.

It is sufficient here to mention that while a personal privilege concedes a right, this right is not in any sense necessary to the office of the grantee. It is an honor or dignity conferred on the incumbent in an office. It is recognition of his worth or ability. A personal privilege, then, although it confers a right, falls completely within the law of personal privileges, and it is not transmitted to successors.[10]

B. *The Pertinent Canons.*

1) Can. 17, § 1. *Leges authentice interpretatur legislator, eiusve successor et is cui potestas interpretandi fuerit ab eisdem commissa.*

Canon 17, § 1 is a clear and definite list of authentic interpreters of law. What is meant here is an authentic interpretation which binds all. Other authentic interpretations are indeed possible which bind only the persons involved and

[8] C. 14, X, *de officio et potestate iudicis delegati,* I, 29.

[9] Reiffenstuel, *Jus Canonicum Universum, De Regulis Juris,* Vol. VII, Parisiis, 1870, R. XLVI, no. 13-14.

[10] Cf. c. 74.

affect only the things which are considered in a rescript or a judicial sentence.[11]

The power of the legislator to interpret his law and the power of a successor to interpret the same law need not be largely expounded.[12] The existence of this power is inherent in the office of legislator. Yet, it must be remembered that the right of a successor to interpret the law of his predecessor is a juridical concept. Hence, the same qualities of mind and the same knowledge of law are not necessary or demanded in the successor in office. The successor's power to interpret is not the result of study. It is juridically the result of his succession. Obviously, the same reasons which influenced the enactment of the law could again be useful in its interpretation. This is desirable. It is not necessary.

Canon 17, § 1 speaks in a general way of delegation in the matter of interpretation. Hence, there is no restriction in this canon on the person to be delegated. Individual persons or groups could be delegated. Imitating, however, the example of his predecessors in establishing the Sacred Congregation of the Council for the interpretation of the decrees of the Council of Trent, Pope Benedict XV set up a Pontifical Commision for the authentic interpretation of the Code of Canon Law.[13] To this commission alone is confided the task of authentically interpreting the Code.[14] No one else is delegated to interpret the Code authentically. Latitude, however, is expressed in canon 17, § 1 for other possible delegation.

A residential Bishop or his successor authentically interprets his own law. No restriction is placed on the person or persons he may delegate to interpret his law. Obviously, Bishops are not authentic interpreters of the Code except in the sense of canon 228, § 1.[15]

[11] Cf. c. 17, § 3.

[12] Cf. Schmidt, *The Principles of Authentic Interpretation,* Washington, 1941, pp. 16-47.

[13] Motu proprio, *Cum iuris canonici,* Sept. 15, 1917.

[14] . . . *Consilium seu Commisionem, uti vocant, constituimus, cui uni ius est Codicis canones authentice interpretandi.*

[15] *Consilium oecumenicum suprema pollet in universam Ecclesiam potestate.*

Nor are individual Bishops authentic interpreters of the laws of councils, provincial and plenary. The Bishops themselves, or their successors as a body can interpret these laws authentically. It is seen, then, that the power to interpret conciliar laws is not as extensive as the power to dispense from them. Power to dispense is granted for a just cause and in particular cases.[16] Nowhere in the Code is the power to interpret conciliar laws granted to individual Bishops.

All successors in office are conceded the right to interpret the laws of their predecessors. Temporary successors must use this power cautiously in the sense of canon 436.[17]

Customary interpretation according to canon 29 [18] can be admitted as included in canon 17, § 1 if one maintains that this customary interpretation is reducible to authentic interpretation. At best this is really an extension of the concept of authentic interpretation. But this opinion is admitted as probable.

2) Can. 58. *Rescripta quaelibet executioni mandari possunt etiam ab executoris successore in dignitate vel officio nisi fuerit electa industria personae.*

Canon 58 has no direct reference at all to legislators, their successors in office or to their delegates. The canon refers to the successors of an executor who has been entrusted with the execution of a rescript. In most instances, the executor of a rescript will be one possessing a dignity or an office. This, however, is merely practice. It is not essential that the executor of a rescript actually possess a dignity or an office.

Canon 58, if interpreted strictly, would be limited to successors of executors possessing a dignity or an office. It would indeed be difficult to imagine succession unless it be to a dignity or an office. Apparently, this strict interpretation is the only one admissible, for delegation of the powers of an

[16] Cf. cc. 82; 291, § 2.

[17] *Sede vacante nihil innovetur.*

[18] *Consuetudo est optima legum interpres.*

executor is not the same as succession in office. Delegation is amply provided for in canon 57, § 1.[19] Hence, while the possession of a dignity or office is not essential for the execution of a rescript, canon 58 is applicable only if the executor actually did possess a dignity or an office.

In canon 58 prohibition to exercise the right of a predecessor must be demonstrated. The law lays down the presumption that any successor in a dignity or office can execute the rescripts granted to his predecessor. Any departure from this presumption must be firmly and clearly established. Canon 58 names one way in which a successor is forbidden to execute a rescript. This occurs when some special reason influenced the choice of the original executor. In all restrictive clauses of this kind no attention should be paid to the actual dignity or office possessed or occupied by the original executor. The mere possession of an office or dignity does not fulfill the requirements of the clause *industria personae.* This clause means something beyond the possession of an office or dignity. Special knowledge may be the item which influenced the rescript's grantor to select this executor rather than another. Other reasons can be adduced but, in every sense and case, the reason must be something that would not be found in occupants of similar dignities and offices. To choose, for instance, the Bishop of a diocese as an executor is not *industria personae.* The usual references to abilities and prudence are not sufficient indications that this executor was chosen in preference to others. Especially is this true if the execution of a rescript is made in regard to one's own subjects or within one's own territory. There the logical man to select as executor of a rescript is the Bishop of the diocese. This is no argument for a special clause restricting the activity of a successor.

3) Can. 66, § 2. *Nisi in earum concessione electa fuerit industria personae aut aliud expresse cautum sit, facultates habituales Episcopo aliisve de quibus in can. 198, § 1 ab*

[19] *Rescriptorum executor potest alium pro suo prudenti arbitrio sibi substituere nisi,* etc.

Apostolica Sede concessae, non evanescunt resoluto iure Ordinarii cui concessae sunt, etiamsi ipse eas exsequi coeperit, sed transeunt ad Ordinarios qui ipsi in regimine succedunt; item concessae Episcopo competunt quoque Vicario Generali.

Canon 66, § 2 provides for the possession of faculties by successors in office. The whole paragraph refers to this item with the exception of the mention of the Vicar General.

In regard to the Vicar General, there is no strictly canonical and automatic succession in office. His faculties are obtained by communication, not by succession.

All Ordinaries, whether Bishops or not, transmit their habitual faculties to successors in office. This succession is determined by law or by the constitutions of religious.[20]

There are two clauses which in canon 66, § 2 forbid transmission of habitual faculties. One clause is the same as found in canon 58: *industria personae.* What was said there is equally applicable here.

The second clause forbidding the transmission of faculties is stated in a general way. All canon 66, § 2 says in this matter is that unless an express clause to the contrary exists, habitual faculties are transmissible. There is a wide range of reasons why in individual cases even habitual faculties should cease, but the point to remember is that they do not cease unless this restrictive clause is clear and unmistakable.

The law of canon 66, § 2 is highly important. If special clauses are for the moment disregarded because of their comparative rarity, the habitual faculties which a Bishop possesses are upon his death immediately possessed by the Cathedral Chapter or by the Board of Diocesan Consultors and later transmitted to the Vicar Capitular or the Administrator. In this transmission, the Vicar General is entirely eliminated, for his office does not provide for continuity. The office of the Vicar General ceases with the death of the Bishop,[21] although

[20] Cf. c. 198, § 1.

[21] C. 430, § 3, 1°.

in certain cases when the death of the Bishop is not officially known, the jurisdiction of the Vicar General continues.[22]

There is, then, normally no need to refrain from the use of habitual faculties during the vacancy of an episcopal See. Except for personal faculties, the same power resides in the Ordinary during this vacancy. Thus, in a sense, wider power is granted the Ordinary of a vacant diocese than he actually possesses by the ordinary power of his office. Many items are forbidden the Vicar Capitular or the Administrator.[23] Even the Apostolic Administrator has not full ordinary power.[24] Since habitual faculties are granted in view of necessities, it is proper that they be transmitted to successors in office, while ordinary power of an office, drawn up as it is for normal cases, can at times be suspended until a new Bishop is named.

4) Can. 80. *Dispensatio, seu legis in casu speciali relaxatio, concedi potest a conditore legis, ab eius successore vel Superiore, nec non ab illo cui iidem facultatem dispensandi concesserint.*

Canon 80 proceeds in much the same way as canon 17, § 1. The same authors of a dispensation are mentioned in canon 80 as are indicated in canon 17, § 1 for the interpretation of laws. The same arrangement is made for the delegation of power.

In canon 80, however, the Superior of the legislator is mentioned. There is no parallel reference to this Superior in the text of canon 17, § 1. But the same application can be made in that canon which is clearly found in the text of canon 80.

Canon 80 is one of the few canons which contains a definition. This is useful, as it sets off clearly a dispensation from an excuse which can itself release from the obligation of law. In a dispensation the legal bond is broken by the dispensing authority. The nature and grade of sufficient cause is deter-

[22] C. 430, § 2.

[23] E.g., cc. 113; 357, § 1.

[24] Cf. c. 315, § 2.

mined by authority.[25] In an excuse which will release from the obligation of law, no action of authority is required. In many cases this will be determined by moral impossibility to obey the law.

There is no restriction placed on the power to delegate in the matter of dispensation as is found in the interpretation of the law of the Code. There an official Commission alone can interpret. There is no comparable organ for the issuance of dispensations. Sometimes it is demanded that a Bishop exercise personally his power to dispense but, normally, the power itself can be delegated.[26]

C. *The Application of Rule 46 to the Pertinent Canons.*

The four canons of the first book of the Code of Canon Law to which Rule 46 is a footnote are not subject to the same application of this Rule. Canons 17, § 1; 66, § 2 and 80 can be considered together. Canon 58 needs to be considered separately.

The application of Rule 46 to the three canons mentioned is direct and immediate. There is no difference at all between the power of a predecessor and the power of a successor. Hence, the literal application of Rule 46 must be made. In canons 17, § 1 and 80 the only powers indicated are the powers on interpreting and dispensing. Rule 46, of course, could cover more items than these, so that the Rule is more extensive than these canons. The same measure of power which existed in the predecessor is found in the successor.

The item of delegation found in canons 17, § 1 and 80 is not entirely within the scope of Rule 46. In so far as the power of delegation is concerned, the Rule and the canons are in agreement; but when the person of the delegate is considered, no application of Rule 46 is found in canons 17, § 1 and 80.

Succession is found also in canon 66, § 2. Here, too, the application of Rule 46 is direct and immediate. Yet, there is

[25] Cf. c. 84.

[26] Cf. c. 199.

some difference between canons 17, § 1 and 80 and canon 66, § 2. In the last named canon a delegate is understood, and it is in this sense that a successor to a delegate enjoys his predecessor's powers that Rule 46 is applied.

The same idea of a delegate is found in canon 58 when succession again is conceded. In this canon an individual right, not a group of rights nor the first right to exercise power, is indicated. In so far as this single right of executing a rescript is concerned, Rule 46 is applied directly and immediately.

The difference, then, in the application of Rule 46 to all these canons is: to canons 17, § 1 and 80, Rule 46 applies to all the powers of office only two of which are mentioned in these canons; to canon 66, § 2 Rule 46 applies to a body of faculties all of which are themselves delegated; to canon 58 Rule 46 is applied to a single right and has no reference to any other power or right.

It will be seen, then, that with the exception of the Vicar General in canon 66, § 2 and with due allowance for restrictive clauses in canons 58 and 66, § 2, the entire text of the four canons mentioned is included within the scope of Rule 46. These canons, however, do not exhaust the possible application of Rule 46.

Rule 46 is one of the easiest Rules of Pope Boniface VIII to apply. Other Rules of Law could be studied also in reference to the canons mentioned above.[27]

D. *Application of Rule 46 to Other Canons.*

An obvious application of Rule 46 is found in the matter of Concordats. The succession of the Roman Pontiff is complete. This succession involves the recognition of agreements entered upon by predecessors. In the discharge of this duty, it is immaterial whether one maintains that a Concordat is a privilege or a bilateral contract.[28] The fact to stress here is

[27] Rules 10; 14; 17; 21; 31; 33; 55; 67; 77 and 79.

[28] Ottaviani, *Institutiones Iuris Publici Ecclesiastici,* Typis Polyglottis Vaticanis, 1935, vol. II, pp. 326-329.

that the obligation, at least in fidelity, assumed by the Pope in the granting of a Concordat is binding upon successors. Rule 46, then, is applied to canon 3 in the sense of complete succession. This approaches the idea of universal succession in Roman Law.

Rule 46 can also be applied to canon 61.[29] In this canon it is stated that rescripts do not cease unless certain conditions are fulfilled. If, then, a rescript of favor has been granted to a group, successors to this group can legitimately use this favor. In a way, this is the same law as found in canon 70, but Rule 46 is applied to this canon from the standpoint of succession not from the standpoint of the perpetuity of a favor.

A clear, unmistakable and direct application of Rule 46 is found in the first part of canon 82.[30] This was considered earlier, but the law itself is in canon 82, not in canon 80. The rest of canon 82 and all of canon 81 can also be interpreted with the aid of Rule 46, but it must be remembered that the power conceded here, while ordinary in the sense of canon 197, § 1,[31] is not really properly fundamental to the concept of succession in office. Since, however, Rule 46 is applied to any right enjoyed by reason of office, it follows that a successor will possess the same right.

A final word on Rule 46. This Rule is a practical thing. It does not really consider the theory of office or the origin of power. Hence, as far as the application of this Rule is concerned, every power normally contained in an office is transmitted to successors. Exceptions to this Rule must be demonstrated; and when they are demonstrated, they can be interpreted as personal privileges. Rule 46 and Rule 7[32] can be used to determine the succession of every power enjoyed by a predecessor in office.

29 *Per Apostolicae Sedis aut dioecesis vacationem nullum eiusdem Sedis Apostolicae aut Ordinarii rescriptum perimitur, nisi aliud ex additis clausulis appareat,* etc.

30 *Episcopi aliique locorum Ordinarii dispensare valent in legibus dioecesanis.*

31 *Potestas iurisdictionis ordinaria ea est quae ipso iure adnexa est officio.*

32 *Privilegium personale personam sequitur et exstinguitur cum persona.*

II. Rule 68.—*Potest quis per alium, quod potest facere per se ipsum.*

A. *Explanation of the Rule.*

The legal foundation for Rule 68 in Canon Law is found in Rule 180 of Roman Law.[33] There the jurist Paul identifies the action of the agent and the action of the one who authorized him to act.

Rule 68, however, is better declared to be a fundamental concept of all law rather than an item borrowed from Roman Law. It is not thereby a rule which is based upon or is immediately discoverable from natural law. The reason for the existence of a rule like Rule 68 is more to be sought in the convenience if not the relative necessity of delegation and subdelegation. These are not ideas which natural law suggests, for they are beyond the concept of necessary and sufficient power in legislators, Superiors, etc. The necessity for the use of agents and delegates is a necessity which grows out of the large amount and measure of work to be done, or from the desire to share the primary responsibility of power. In an institution like the Church, the primary responsibility is founded in theology and, in this sense, the idea of delegation is reducible to a theological concept.

The purely practical basis for Rule 68 is further shown in the prohibition to delegate power and further still in the prohibition to subdelegate power. If the idea supporting Rule 68 were essential to power, it could not be the subject of prohibitions. Yet, if one prescinds from the supreme legislator, every other Superior can be prohibited from delegating his power. This is clearly established in canon 199, § 1 of the Code of Canon Law.[34] There power to delegate is recognized, but provision is also made for the prohibition to delegate.

[33] D. 50, 17, 180: *Quod iussu alterius solvitur, pro eo est, quasi ipsi solutum esset.*

[34] *Qui iurisdictionis potestatem habet ordinariam, potest eam alteri ex toto vel ex parte delegare, nisi aliud expresse iure caveatur.*

Delegated power itself is even more restricted in canon 199.[35] When the power to act becomes subdelegated power, a presumption of the lack of power further to subdelegate is found in the law.[36]

The Code of Canon Law contains no canon relative to the power of the Roman Pontiff to delegate. Theology controls the use of his power, and whatever restriction may be found will be deducible from the concept of the office of Supreme Pontiff in theology. But, in regard to every other office in the Church, canon 199 is the controlling law. There, delegation is usually permitted but it can be forbidden. If the power to delegate were essential to the office, such prohibition would be inconceivable.

Reiffenstuel in his commentary on Rule 68 [37] says there are various acts of business which one is impeded from doing himself or is unwilling to perform. What Reiffenstuel says is precisely the reason for the existence of Rule 68.

In the consideration of Rule 68, thought must be directed to the whole responsibility of a Superior and his practically limited ability to discharge this responsibility himself. If this be kept in mind, the need for power to delegate will be obvious. The existence, too, of a prohibition on the power to delegate should likewise be obvious, for where some restriction is found, it is placed there so that at least this responsibility must be discharged personally. Why one item can be delegated and another cannot is really immaterial. In its ultimate analysis power to delegate is a supplementary power which, again, in its ultimate analysis, is a concession from a higher Superior as determined in the law. This concession could be given or revoked or granted only for partial use or for specific cases.

It is conceded that for all practical purposes, Rule 68 supports the entire field of delegation and in its turn subdelega-

[35] Cf. c. 199, § 2, § 3, § 4.

[36] Cf. c. 199, § 5.

[37] *O.c.*, Vol. VII, R. LXVIII, no. 2.

tion. This, in theory, could go on indefinitely but, in practice. the validity of the Rule is not recognized presumptively beyond subdelegation. However, this is only a presumption which can be easily overthrown.[38]

Rule 68 naturally will not support the delegation of power which is not possessed.[39] In this way, it is used with Rule 46 which says that a successor in office uses the same power as his predecessor. In addition to the possession of power, it is necessary that delegation be lawful. Otherwise Rule 68 is not applied. Lawfulness of delegation is in so many cases the concession of law that restriction to delegate must be demonstrated. Here, in order to apply Rule 68 properly canon 199 must be thoroughly understood.

To judge the validity or invalidity of an act performed by the use of delegation is not as easy as it would appear. There is little difficulty where the power is itself delegated by a higher authority as is the case in faculties to dispense, etc., for the concession of this power is, in a sense, granted conditionally. Personal use of this power fulfills the condition imposed. Delegation of this power ignores this condition, and the subsequent act is certainly invalid.

Prohibitions not to delegate one's own ordinary power of office are more difficult to judge when they are disobeyed. It would be an easy solution if Rule 64 were universally valid as was its counterpart in Roman Law.[40] But, in Canon Law Rule 64 was gradually weakened,[41] so that an invalididating clause was necessary before a prohibited act is likewise invalid.[42] Should an invalidating clause be found in a prohibition to delegate ordinary power, an act contrary to this prohibition would certainly be invalid.

[38] Cf. c. 199, § 5.

[39] Reg. 46, R. J. in VI°: *Is, qui in ius succedit alterius, eo iure, quo ille, uti debebit.*

[40] C. 1, 14, 5.

[41] Reg. 64, R. J. in VI°: *Quae contra ius fiunt debent utique pro infectis haberi.*

[42] Cf. c. 11.

But can it be said that if such an invalidating clause is not found, an act contrary to a prohibition is certainly invalid? A prohibition without a certainly invalidating clause is found in canon 401, § 1.[43] The verb *non potest* is not a necessarily invalidating term either today or in earlier interpretation of law.[44] Could, then, this restricted power be none the less validly delegated?

To answer this question, it is necessary to consider the origin of the ordinary power of an office. Powers which are essential in essential offices have their origin in theology. This must be kept in mind, so that prohibitions to delegate, or in general to act, with essential powers in essential offices can in fact be made by higher authority; but they are not presumed nor, if found, interpreted as invalidating clauses unless they are clear and unmistakable. Only for the gravest cause would such a clause be determined upon by a higher authority. This is not necessarily the case if power, although ordinary in the sense of canon 197,[44a] is not essentially such power, either because delegated power would in reality be sufficient or because the office itself is not essential. An office not essential in itself, nor containing the only kind of power essential to the office is found in canon 401, § 1. This is the office of the canon penitentiary. Delegation of his power is forbidden him. This is a restriction on his ordinary power. Since this restriction is found regarding the kind of power which is not essential to his office, it must be concluded that this power was granted to the office on the condition that it be used personally. If, then, by disobedience this condition is disregarded, the act of delegation must be considered as invalid. Hence, it seems even with the aid of canon 11[45] an analysis

[43] *Poenitentiarius canonicus . . . obtinet in iure potestatem ordinariam, quam tamen aliis delegare non potest absolvendi,* etc.

[44] Cf. Van Hove, *De Legibus Ecclesiasticis,* Mechliniae-Romae, 1928, p. 168.

[44a] *Potestas iurisdictionis ordinaria ea est quae ipso iure adnexa est officio.*

[45] *Irritantes aut inhabilitantes eae tantum leges habendae sunt, quibus aut actum esse nullum aut inhabilem esse personam expresse vel aequivalenter statuitur.*

of powers contained in an office must be made before assurance can be had of invalidity of delegation.

In this explanation of Rule 68, the notion of delegation was examined at length because it is, perhaps, the most important way in which Rule 68 is applied. To understand this Rule it is necessary to understand delegation thoroughly.

The application of this Rule is in fact almost limitless if one only keeps in mind the possibility of restriction by higher authority. Within the generous limit of law, wide range of application is accorded Rule 68.

It is obvious that Rule 68 is applied in matters of mandates, in selecting agents and procurators, both judicial and extrajudicial. This Rule is even applied to the selection of a procurator in the sacrament of Matrimony.[46] It would be tedious to name all the ways in which Rule 68 can be applied, but enough has been said to indicate its wide use.

When Rule 68 fails of application, it is usually because the act in question must by its nature, or by the direction of law expressed in the law itself, or in special clauses be performed personally. Acts, then, which by their nature are personal cannot, of course, be delegated. Other items are considered personal in law both today[47] as well as in earlier centuries.[48]

Rule 68 can also fail of application where no jurisdiction is involved but only ministration. This was already the law in the time of Pope Gregory IX.[49] The Pope indicated that certain ministrations could not be delegated.[50] The law, however, of Pope Gregory IX must be studied today with the law on rescripts, for some of the items forbidden by the Pope are no longer considered mere ministration.

[46] Cf. c. 1091.

[47] Cf. e.g., cc. 338, § 1; 465, § 1.

[48] C. 3, X, *de clericis non residentibus in ecclesia vel praebenda*, III, 4.

[49] C. 43, X, *de officio et potestate iudicis delegati*, I, 39.

[50] *Nulli, cui commissum fuerit praedicare crucem . . . liceat haec de cetero aliis demandare, quia non sibi jurisdictio sed certum ministerium potius committitur in hac parte.*

In concluding the explanation of Rule 68, it should be mentioned that the Rule is not applied whenever an agreement is arrived at between parties to exercise their rights personally. This could occur in contracts.

B. *The Pertinent Canon.*

Can. 80. *Dispensatio, seu legis in casu speciali relaxatio, concedi potest a conditore legis, ab eius successore vel Superiore, nec non ab illo cui iidem facultatem dispensandi concesserint.*

Canon 80 does not restrict or limit the number of persons or specify the canonical position of those who can be delegated to dispense from the obligation of law.

It is obvious that the legislator himself can dispense from his own law. It is just as obvious in modern Canon Law that a successor possesses the same power. In the rank of hierarchy the Superior of the actual legislator can dispense from the lower legislator's law. This has practical application in the relationship between the Roman Pontiff and Bishops. Or, in a word, between the Roman Pontiff and all other canonical legislators.

The power to dispense from a suffragan's law is not vested in the Archbishop of the province nor in a provincial or plenary Council. The Archbishop, however, or the entire Council could be delegated to dispense.

In canon 291, § 2 a Bishop, in certain circumstances, is authorized to dispense from the law of provincial and plenary Councils.[50a] This is ordinary not delegated power. A Bishop, however, could be delegated by the Council to dispense from these laws in addition to his ordinary power. This might include general dispensations.

No more need be said here of delegation to dispense from the obligation of law. The essential relationship of operation is clearly indicated in canon 80.

[50a] . . . *nec Ordinarii locorum ab iisdem dispensare possunt, nisi in casibus particularibus et iusta de causa.*

C. *The Application of Rule 68 to the Pertinent Canon.*

In the explanation of Rule 68, attention was largely centered on delegation. The application of Rule 68 to canon 80 is precisely in the matter of delegation. Application here is direct and immediate.

The extent of the power granted to a delegate in canon 80 is not there determined. The canon merely states who can dispense. Whether or not full power is granted to a delegate so that he may himself subdelegate depends on the actual concession received. This is not determined in canon 80 but is treated in canon 199.

As far as the application of Rule 68 is concerned, whatever power the grantor possesses he can normally delegate. This includes all Superiors. To a list, partial or complete, of persons whom a Superior can delegate, Rule 68 has no application. Rule 68 is applied only to the persons named in canon 80.

It should be further pointed out that a fusion of Rules 46 and 68 will completely interpret canon 80. Rule 46 will be applied to legislators, their successors and their Superiors. Rule 68 will be applied to the remaining text of the canon. There are few other canons in the first book of the Code of Canon Law where applications of the Rules of Law are so obvious.

D. *The Application of Rule 68 to Other Canons.*

As already stated, there is an affinity between Rules 46 and 68. Therefore whatever was stated in regard to the application of Rule 46 to the canons where it is cited in the footnotes can in practically the same measure be said of Rule 68 in its application to these canons. Hence, where authentic interpretation of law is concerned [51] or the execution of rescripts,[52] Rule 68 is equally applicable. In canon 66, § 2, however, where Rule 46 is applied, no application of Rule 68 is found

[51] Cf. c. 17, § 1.

[52] Cf. c. 58.

except where restrictive clauses are established. Yet, even here the clauses are restrictive of succession, not really a prohibition to delegate. None the less the force of these clauses does affect the right of delegation. In this sense a denial of the validity of Rule 68 is discovered.

Attention should be called to canon 83 where it is stated that pastors cannot dispense from general or particular laws unless this power is expressly conceded to them.[53] This canon has no reference to pastors who may be delegated by statute to dispense from the law. It has, however, reference to the absence of power to dispense from law except where it is expressly conceded. An example of such concession is found in canon 1245, § 1, where certain restrictions are made on the dispensation from fast, abstinence and the observance of feast days.[54]

Pastors, then, have no radical power of office to dispense from the obligation of law. But, the power granted the office is ordinary. Hence, it can be delegated, for no restrictive clause is found in law. Hence, too, Rule 68 can be applied here.

It should also be pointed out that canon 83 includes in the term *parochi* all who are named in canon 451, § 2. These are quasi-pastors in places where canonical parishes are not yet established.[55] Parochial Vicars who possess full parochial power are also included.[56]

III. Rule 72.—*Qui facit per alium est perinde, ac si faciat per se ipsum.*

A. *Explanation of the Rule.*

Rule 72 is closely allied to Rules 46 and 68. The source for Rule 72 in Canon Law is the same as for Rule 68. Much of the explanation and application of Rules 46 and 68 can be

[53] *Parochi nec a lege generali nec a lege peculiari dispensare valent, nisi haec potestas expresse eisdem concessa sit.*

[54] *Non solum Ordinarii locorum, sed etiam parochi . . . possunt . . . dispensare.*

[55] Cf. c. 216, § 3. To all these, Rule 68 can be applied.

[56] Cf. cc. 473, § 1; 474; 475, § 2.

said and made of Rule 72. Although Bartoccetti says [57] it is difficult to see where Rules 68 and 72 differ, there is really a difference at least in the standpoint from which these Rules are applied. Rule 68 is viewed from the standpoint of the one who possesses power. There it is asserted that whatever a person can do personally, he can also do through others. Rule 72 says in effect, that what is done by others in the name of the delegator is attributable to him. Thus, Rules 68 and 72 are not precisely the same.

Rule 68 considers the power to do something through others. Rule 72 considers the effect of such an action performed by others. Thus Reiffenstuel must be followed in saying that Rule 72 is different from Rule 68.[58]

The emphasis, then, in Rule 72 is placed on the effects of an act performed by a delegate. This is important to know, for it immediately opens vistas which are not contemplated in Rule 68. Thus, crimes which are ordered to be committed are really attributable to the principle cause, and he is held responsible. It is easy to see how important this is in penal law.[59] Hence, Rule 72 also carries with it some force which Rule 169 in Roman Law possessed with the approbation of the jurist Paul.[60]

Rule 72 can be understood in both a favorable and an unfavorable sense. In the favorable sense, it is identical with Rule 68. In an unfavorable sense, it has no relationship at all with Rule 68. Both aspects of Rule 72 should be carefully studied. Not much time, however, need be spent on the favorable aspect of Rule 72. Everything which has been said of Rule 68 can be said here of Rule 72. Even the failures of Rule 68 are likewise charged to Rule 72. The only thing which is different in these two Rules in the present comparison is the standpoint from which an act is viewed.

[57] *O.c.*, p. 180.

[58] *O.c.*, Vol. VII, R. LXXII, no. 2.

[59] Cf. c. 2209, § 3.

[60] D. 50, 17, 169: *Is damnum dat, qui iubet dare.*

In the unfavorable sense in which Rule 72 can be applied, direct responsibility must be charged to the principal cause for every act performed at his direction. Nothing not connected with this direction or order is attributable to him. Therefore, if an agent on his own authority does something to injure another, this injury is not attributable to the one who delegated him. Careful distinction must be made here so that proper responsibility can be assigned.

In this connection there is an important decretal to study. This is a decretal from the hands of Pope Alexander III.[61] The Pontiff says in effect that those who order a cleric to be injured are to be sent to Rome; for they are responsible, since by their authority a crime is committed.[62]

All penal law comes within the scope of Rule 72; for whenever a crime is ordered, first responsibility is charged to the principal cause. Canon 2209, § 3 calls this cause the principal author of crime.[63] This does not mean that the actual physical perpetrator of crime is absolved from blame; but it does mean that his responsibility, while serious, is less than that of the principal cause.

Although not directly connected with the text of Rule 72, a case should be mentioned where this Rule is also applied. This is the case where others agree to a crime after it has been committed at the order of the principal cause. This would occur, for instance, in the consent found in the agreement to accept property illegally alienated. The penalties for this crime are based on the agreement to accept and retain property which legally belongs to the Church. The Decree of Gratian contains a condemnation of this practice.[64] This condemnation may not be authentic, but it is the same law with

[61] C. 6, X, *de sententia excommunicationis*, V, 39.

[62] *Illi vero, qui non per se ipsos, sed eorum auctoritate, vel mandato, alii violenter iniiciunt manus in clericos ad sedem apostolicam sunt omni excusatione cessante mittendi, quum is committat vere, cuius auctoritate vel mandato delictum committi probatur.*

[63] . . . *mandans qui est principalis delicti auctor.*

[64] C. 5, C. XVII, q. 4.

some modifications found in the Code of Canon Law today.[65]

B. *The Pertinent Canon.*

Can. 80. *Dispensatio, seu legis in casu speciali relaxatio, concedi potest a conditore legis, ab eius successore vel Superiore nec non ab illo cui iidem facultatem dispensandi concesserint.*

In reference to Rule 72, canon 80 is interpreted as above under Rule 68.

C. *The Application of Rule 72 to the Pertinent Canon.*

Little indeed can be said beyond what was already said in the application of Rule 68 to canon 80. The only thing which should be pointed out is that the unfavorable aspect of Rule 72 is not applied to canon 80. It is inconceivable that a Superior would order a delegate to dispense with the intention that this dispensation should injure someone.

The favorable aspect of Rule 72 is directly and immediately applied to canon 80. Thus the principal cause is responsible for the acts contained in the delegation of power. Whatever the delegate does within the limits of his delegation is attributable to the one who delegated him.

D. *The Application of Rule 72 to Other Canons.*

Here, too, what was said of the application of Rule 68 can also be said in regard to Rule 72. Nothing further need be added.

It is clear, then, that Rules 46, 68 and 72 should be studied together. There is considerable affinity in these Rules. Especially is this so with Rules 68 and 72. It is not to be denied that a thorough knowledge of these Rules and their application will go far toward a satisfactory knowledge of the existence and power of incumbents in office. Rule 46 indicates what power exists, Rules 68 and 72 show how this power can be exercised and what responsibility for acts obtains.

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[65] Cf. c. 2347.

CONFLICT OF LAWS IN CANON LAW*

Prologue

CONFLICT of Laws in Canon Law is most aptly illustrated in the Law of Contracts, and this paper will deal primarily with this phase of the subject. However, we shall also consider, to a substantial extent, the force of judgments of our ecclesiastical tribunals in the field of the law of the State.

Generally speaking, the Law of Contracts deals with *temporal* matters. This fact explains why the *Codex Iuris Canonici* contains no integrated body of laws on contracts. To make up for this void, the *Codex Iuris Canonici,* by Canon 1529, adopts as its own, as the law of the Catholic Church, the Law of Contracts already enacted by the politically organized society of the place. Whatever the secular law of the place prescribes for contracts and settlements thereof, the diocese, in its curia through its administrative acts and through its legislative acts and in its tribunal through its judicial acts, adopts, just as if the Church's Supreme Legislator had enacted said legislation. There are two exceptions, however. The secular law must not contravene Divine Law (either Divine Positive Law or Divine Natural Law) or any express legislation in the *Codex Iuris Canonici.* For the Church, as a sovereign, has the jurisdiction, legislatively, administratively, and judicially, to act, subject to Divine Law, in the administration of ecclesiastical goods.

* Address delivered by the Reverend Kenneth R. O'Brien, J.C.D., Archdiocese of Los Angeles, California, at the nineteenth National Convention of The Canon Law Society of America, held at the Adolphus Hotel, Dallas, Texas, October 15-17, 1957.

Assistance in secular law matters by Daniel E. O'Brien, LL.B., Harvard Law School, and LL.M., Boston University Graduate School of Law, is gratefully appreciated.

No cases involving Canon 1529, so far as I know, have gone to the Sacred Roman Rota from the ecclesiastical courts of the United States, wherein the Law of Contracts of the states has been declared to be a part of Canon Law. But cases from countries on the European continent have reached the Sacred Roman Rota dealing with Canon 1529.

No official interpretation of Canon 1529 has been issued by the Pontifical Commission for the Authentic Interpretation of the Canons of the Code, as of October 1, 1957, to my knowledge. In the absence of such official interpretation of this canon, and as an indication of the correct manner of its application, from which in turn further principles of interpretation may be drawn, a search has been made of every case decided by the Sacred Roman Rota from May 19, 1918, the effective date of this canon, to the latest published volume of the Rotal Decisions, which cases are not made public until the expiration of ten years after the decisions thereof. Thus far, fifteen cases, more or less, involving the application of Canon 1529, have been reported by the Sacred Roman Rota.

I. The Case of the Priest's Housekeeper

In our limited time today, we can discuss only one of these cases, a French case. This case came before the ecclesiastical courts *five* times, once before the Tribunal of the Archdiocese of Toulouse, and three times before the Sacred Roman Rota, which reported it as "TOLOSANA-CREDITI", in 1927 in its Volume XIX at pages 261 to 275; in 1928 in its Volume XX at pages 292 to 305; and in 1931 in its Volume XXIII at pages 92 to 100, and once before the Signatura Apostolica.

The ultimate facts found by the Tribunal of the Archdiocese of Toulouse are as follows: On February 12, 1923 Madam Figadère-Cazals became housekeeper for a priest. During her employment she delivered to the priest some French Government bonds, which belonged to her, for safekeeping, with the understanding, according to her story, (if accepted as true), that they be returned to her. The priest sold these securities,

keeping the proceeds. After terminating her employment, the housekeeper demanded of the priest, *inter alia,* an accounting and the delivery to her of the proceeds of the securities. The priest refused, claiming that the housekeeper had made an outright gift to him of the securities.

Thereupon the housekeeper brought proceedings in the Tribunal of the Archdiocese of Toulouse. The Tribunal of the Archdiocese decided in favor of the housekeeper and ordered the priest to return to her 15,606 francs, with interest.

The *ratio decidendi* was as follows: the case was governed under Canon 1529 by Article 1915 of the French Civil Code which provided: " A deposit, in general, is an act by which one receives the thing of another, with the burden of caring for it, and of restoring it in kind." The Tribunal of the Archdiocese ruled that in so far as the housekeeper's case was concerned, Article 1915 had become a part of Canon Law, and that by the application of that article to the facts of the case, the priest's housekeeper was entitled to the return by the priest of 15,606 francs with interest.

The priest appealed to the Sacred Roman Rota. The Rota ruled as to the applicable law that, under Canon 1529, either Article 1915 or Article 894 of the French Civil Code would control their decision. Article 894 provides that an *inter vivos* donation is an act by which the donor strips himself presently and irrevocably of the thing given, in favor of the donee, who accepts it.

The housekeeper's case proceeded on the theory that Article 1915 applied, and she contended that the evidence warranted the conclusions that she delivered the securities to the priest for safekeeping, only, and that she was entitled to have them returned on demand.

The priest's case proceeded on the theory that Article 894 of the French Civil Code applied, and he contended that the evidence warranted the conclusion that the housekeeper had made a voluntary gift to him of the securities, *i.e.,* what is known as a " *donatio* " under the French Code.

The ultimate facts found by the Sacred Roman Rota were to the effect that the evidence warranted the conclusion that the housekeeper had made a voluntary gift to the priest.

The Sacred Roman Rota rendered its decision that the housekeeper was *not* entitled to an accounting and that the priest owed her nothing, thus reversing the decision of the Tribunal of the Archdiocese of Toulouse. The housekeeper appealed.

A different *turnus* of the Sacred Roman Rota, on this appeal, gave its decision against the priest and in favor of the housekeeper, awarding her 15,606 francs with interest, thus reversing its previous decision.

The Rota had ruled that, under Canon 1529, the pertinent provisions of the French Civil Code as to contracts applied and had found that the housekeeper had made an Article 894 "*donatio*" to the priest. The Rota invoked certain purported provisions of the French Civil Code relative to *revocation* of gifts and found that the gift to the priest had indeed been *revoked.* A "*restitutio in integrum*" was sought by the priest from the Signatura Apostolica. This application was granted on the grounds that the second *turnus* of Rotal Judges had obviously made an error of law.

On the final proceedings the Sacred Roman Rota rendered its decision March 21, 1931. It ruled that the reasons for revocation cited by the Rota in its second decision were not reasons set forth in the French Civil Code and hence not Canon Law, but that Article 953 was the pertinent article and that the facts did not warrant findings making the gift revocable. The Roman Rota affirmed its first decision that Father Dessain owed nothing, thereby closing the case in favor of the priest and against the housekeeper.

Now let us look at the opposite side of the picture and note the concern of secular-law lawyers for Canon Law. Let us examine trials of cases in the secular courts and see how far

the principles of Conflict of Laws apply in spiritual matters and in temporal matters annexed to spiritual matters.

The failure of diocesan tribunals to assume their proper jurisdiction of many controversies in which they have competency has been one of the principal causes of the confusion of secular-law lawyers who try to get their controversies adjudicated in the courts of the State, without first seeking relief in the diocesan courts.

II. The Suit for Refusing Communion

The Massachusetts case of *Carter v. Papineau,* reported in 222 Massachusetts Reports at page 464, and decided in 1916, will serve to illustrate this point in proper jurisdictions.

Mrs. Carter brought suit in 1913 against the Rector of St. George's Church of Maynard and the Bishop of Massachusetts (of the Protestant Episcopal Church of America), *inter alia,* for refusal to give her communion.

She claimed that on August 20, 1911, she was a communicant of the Protestant Episcopal Church of America and was lawfully entitled to partake of the Holy Communion as administered in that church; and that on that day, and at the proper time, and in a proper manner she came forward to partake of the Holy Communion, but the defendants refused to administer to her Holy Communion.

The Protestant Episcopal Church of America has a body of canons or ecclesiastical law of its own. By Canon 40 the procedure was regulated for one who had been refused Holy Communion by a minister and provided for an appeal to the Bishop.

Mrs. Carter did not proceed in the Church court in accordance with Canon 40, but brought suit in the state courts for refusal to give her communion, and also sought additional damages for defamation and for being prevented from entering the church on two occasions.

The case was tried before a jury. At the close of the evidence, the judge, at the request of the defendants, ruled that,

as matter of law, the plaintiff could not recover on any of the counts and ordered verdicts for the Rector and the Bishop.

Mrs. Carter brought her case to the Supreme Judicial Court of Massachusetts. The Supreme Court decided against her on the ground that it had no *jurisdiction* over the matters, especially for the refusal to give communion, at least, not until she had pursued the matter to a conclusion in the Bishop's Court.

Mr. Justice Braley, speaking for the Supreme Judicial Court of Masaschusetts, said, in part:

> The plaintiff has not availed herself of this right of appeal to the only personage having the requisite ecclesiastical authority to review her standing as a member and communicant or to pass upon her ceremonial rights. . . .
>
> But if an appeal had been taken properly and the decision had been adverse, the plaintiff would have been remediless, for in this Commonwealth her religious duties as a communicant are not enforceable in the civil courts.

This Massachusetts case is the only decision on this particular sacramental phase of the subject in the United States.

III. The Controversy Over the Use of a Church

We will now consider a very famous case, probably the most famous of its kind, wherein parties brought their controversy into church courts, had it adjudicated, but being dissatisfied with the ecclesiastical judgment, brought proceedings anew in the *state* courts. This is the case of *Watson v. Jones,* decided by the Supreme Court of the United States on April 15, 1872, and reported in 13 Wallace 670-738.

The facts in *Watson v. Jones* differ from those in *Carter v. Papineau.* The Episcopalian communion case, primarily, involved no right to possession of or use of *temporal* things, such as property. It principally involved a purely *spiritual* matter, the administration of a sacrament. It is easy to see why the Supreme Judicial Court of Massachusetts could summarily dismiss Mrs. Carter's claim. But in *Watson v. Jones* we are

going to see that the secular courts were asked to adjudicate rival claims to *the use of property* of a Presbyterian church whose membership had split upon some doctrinal point, and *to review the proceedings of the judicial departments of the Presbyterian Church and to pronounce them invalid for irregularities under the applicable church constitution and laws.*

A bill in chancery in the Circuit Court of the United States was brought by a faction of the Walnut Street Presbyterian Church of Louisville, which may be described as the Jones faction, against what may be called the Watson faction. The suit was to decide which one of these two bodies should be recognized as entitled to *the use* of the church property. The bill alleged that the Watson faction threatened to take possession of the church and to prevent the Jones faction from worshipping therein and their pastor from officiating. The bill also alleged that the church formed a part of the Presbyterian Church of the United States; that the governing bodies, called Judicatories, above the session or local church are, in successive order, the Presbytery of Louisville, the Synod of Kentucky, and the General Assembly of the Presbyterian Church of the United States (which bodies entertain appeals from those below and prescribe corrective measures in other cases); and that the Watson faction had withdrawn from the Walnut Street Church and the General Presbyterian Church of the United States and had connected themselves with another religiously organized society.

Previously, the controversy had been considered in the church courts, and the highest judicatory to which it had been carried, the General Assembly, made a decision in favor of the Jones faction and against the Watson faction, declaring that the Presbytery and Synod embraced by the Watson faction was "in no sense the true and lawful Synod and Presbytery, in connection with and under the care and authority of the General Assembly of the Presbyterian Church of the United States of America" and were permanently excluded from connection with or representation in the assembly; and that the

Synod and Presbytery adhered to by the Jones faction was the true and lawful Presbytery of Louisville and Synod of Kentucky.

The Circuit Court of the United States granted an injunction requiring the Watson faction to permit the Jones faction *to share the use of the church.* The Supreme Court of the United States affirmed the judgment of the Circuit Court on the ground that the secular courts were bound to accept the decision of the General Assembly as *conclusive.* Mr. Justice Miller, speaking for the Supreme Court of the United States, said, in part:

> In this class of cases we think the rule of action which should govern the civil courts, . . . is, that whenever the question of discipline or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to whom the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. . . .

Every single judgment of a diocesan Tribunal is affected and theoretically given force by *Watson v. Jones,* and practically so except wherein the State has wrongfully usurped the jurisdiction of the Church in marriage cases. In the event that a litigant in the Church courts should become dissatisfied with an ecclesiastical decree and seek a review of the case in the secular courts, the secular courts would, under the doctrine of *Watson v. Jones,* except in said marriage cases, hold that the decree of the Church courts would be binding on them.

I have time to illustrate this point with but two cases.

IV. The Pious Foundation Case.

One of these is the case of *Gonzales v. The Roman Catholic Archbishop of Manila,* decided by the Supreme Court of the United States on October 14, 1929, and reported in 280 United States Supreme Court Reports at pages 1 to 19.

A collative chaplaincy of the pious foundation, established in 1820, became vacant in 1910. In 1922, one Raul Gonzales, ten years of age, petitioned the Archbishop of Manila to be appointed chaplain. His petition was duly processed in the Chancery Office of the Archdiocese. The Archbishop ruled adversely to Raul's petition squarely on the ground that he did not possess the qualifications required by the *Codex Iuris Canonici,* effective May 19, 1918.

After the denial of his petition by the Archbishop, Raul brought proceedings in the secular courts of the Philippines, demanding that he be appointed chaplain and be paid the aggregate net income from the property of the foundation during the vacancy. Raul contended that his qualifications were to be determined by the canon law in force in 1820 and that he qualified thereunder.

The trial court in Manila decided that Raul was entitled, as a matter of right, to be appointed to the collative chaplaincy and to the net income of the property during the vacancy. The trial court based its decision apparently on the ground that Raul was the *cestui que trust* of the property and that the best qualification test as to the chaplaincy should be that under canon law in force in 1820, and not under the *Codex Iuris Canonici* of 1918.

The Archbishop appealed to the Supreme Court of the Philippines and this court reversed the judgment of the trial court. In the Supreme Court of the Philippines, Raul contended that the foundation was a perfected *trust,* enforceable in a court of equity, that the Archbishop was a *mere trustee,* and that Raul, himself, was the present rightful beneficiary of the entire property. The Archbishop argued several propositions of law and fact, one of which was that Raul did not possess the qualifications required by the *Codex Iuris Canonici.* The Supreme Court of the Philippines based its decision in favor of the Archbishop on the ground that as matter of fact Raul did not possess the qualifications required by the *Codex Iuris Canonici.*

Raul carried the case to the United States Supreme Court. The decision of the Supreme Court of the Philippines in favor of the Archbishop was affirmed by our own Supreme Court. The United States Supreme Court posed the questions which it had to answer, as two in number, viz., whether Raul was legally entitled to be appointed chaplain and whether he was entitled to the surplus income which had accrued during the vacancy, a negative answer to the first requiring a negative answer to the second.

The Archbishop argued that the secular courts did not have jurisdiction of the matter, maintaining that the matter was a *spiritual* matter over which the Court had exclusive jurisdiction. On this point the United States Supreme Court ruled against the Archbishop. But applying the doctrine of *Watson v. Jones,* the United States Supreme Court, conceding that the Church had the exclusive jurisdiction to determine the essential qualifications of a chaplain and to determine whether a candidate possessed those qualifications and finding that the Archbishop had decreed that Raul did not possess the qualifications required by the *Codex Iuris Canonici,* ruled that the secular courts must accept as *conclusive* this church determination in litigation before them. Mr. Justice Brandeis wrote the opinion of the United States Supreme Court, and said, in part:

> Among the Church's laws which are claimed to be applicable are those creating tribunals for the determination of ecclesiastical controversies. Because the appointment is a canonical act, it is the function of the Church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion or arbitrariness, the decisions on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties made them so by contract or otherwise. . . .
>
> . . . There is not even a suggestion that he (the Archbishop) exercised his authority arbitrarily. . . .

V. Father Baxter's "Salary" Case

The final case for our consideration is that of *Father John F. Baxter v. Bishop Charles E. McDonnell,* decided by the Court of Last Resort of the State of New York on March 1, 1898, and reported in 155 New York Reports at page 83.

In this case Father Baxter, a Roman Catholic Priest of the Diocese of Brooklyn, sued his Bishop in the secular courts for back "salary" of about $4,000.00 on the ground that there was an implied contract in common law between the Bishop and the Priest obligating the Bishop to make good the difference between $1,000.00 a year, the then usual allowance for Pastors in the Diocese, and $200.00 which the Priest actually received as Pastor from parish funds. Father Baxter also sought to recover in this suit the difference between $1,000.00 a year and the sum of $300.00 a year for the period during which he served as a hospital chaplain after he had been transferred from his pastorate.

Father Baxter did not contend that he had an express contract of employment with the Bishop but he did contend that a contract of employment at the rate of $1,000.00 a year was implied in common law as a legal consequence flowing from the relation of Bishop and Priest created by canon law.

Before Father Baxter had sued in the secular courts, he had brought his case in the Metropolitan Court of the Archdiocese of New York and that church court rendered a judgment against the Priest and in favor of the Bishop.

In the secular court the Bishop's attorney pleaded to the merits and set up some special defenses, the third of which was that Father Baxter was barred from proceeding with his claim for salary in the secular courts because of the adverse judgment rendered against him in the church courts. Because of a technicality in the law of pleading in the New York courts, the sufficiency of the Priest's complaint was put in issue with the same force and effect as if the Bishop had demurred to the Priest's complaint.

The lower courts of the State of New York gave judgment to Father Baxter. However, the Bishop appealed and the New York Court of Appeals reversed the judgment of the lower courts and dismissed Father Baxter's complaint, deciding the case in favor of the Bishop.

Judge Haight, who wrote one of the two opinions, said, in part:

> The defense is that the plaintiff, himself, prior to the commencement of this action, brought suit against the defendant for the same cause in the Metropolitan Court of the diocese, that being an ecclesiastical court possessing jurisdiction as such over the parties and the subject matter of the controversy; that the cause was duly heard in that court and decided. The precise question is whether such a defense is good in law. . . . In such a case, when it appears that the whole controversy had once been submitted by the parties to the ecclesiastical tribunal which the church itself has organized for that purpose, the civil courts are justified in refusing to proceed any further. The decision of the church judicatory may and should then be treated as a bar to the action and a good defense in law . . . (citing *Watson v. Jones*).

No state can make a law on a spiritual matter which by its own force is operative in the Catholic Church. The only law enforced in the Catholic Church as a sovereign, other than the law of God, is its own law. By the law of the Church, rights or other interests in the Church may, in certain cases, depend upon the law in force in some state or states.

That part of the law of the Church which determines whether, in dealing with a legal situation on a temporal matter, the law of the state will be recognized, be given effect, or be applied as Canon Law, is called the Conflict of Laws in Canon Law.

Reverend Kenneth R. O'Brien, J.C.D.

Los Angeles, California

Cases and Studies

ROMAN REPLIES AND RECENT JURISPRUDENCE *

Diocese of Alexandria:

DISSOLUTION OF MIXED MARRIAGE WITH DISPARITY OF CULT DISPENSATION-CATHOLIC PETITIONER

Esther, a Catholic, and Guy, non-baptized, attempted civil marriage in 1935. The marriage was validated with the proper dispensation from the impediment of disparity of cult shortly afterwards. Less than two years later, the marriage broke up through the fault of Guy. A divorce was obtained and both parties remarried. Esther attempted marriage with a Catholic man and has two children by him. She petitioned the Holy Father for the dissolution of her marriage to Guy for the preservation of her own Faith. The case was sent to Rome in October 1956, and on July 19, 1957, the Holy Father granted the dissolution, permitting Esther to have her present marriage validated.

Archdiocese of Chicago:

CASE THAT COULD HAVE BEEN TRIED BY A TRIBUNAL, USING THE CODE COMMISSION DECISION OF 1947

Laurence, baptized in the Methodist sect (doubtfully because of method of sprinkling used on a group), married Louise, doubtfully baptized (doubt of fact), before a Methodist minister on May 5, 1917. Louise had previously married George, about whose religious affiliation nothing could be learned, on November 25, 1903, before a Justice of the Peace. At the time of the marriage of Laurence with Louise, George was still alive but died before the investigation of this case began.

* Reported by the Reverend John S. Quinn, J.C.D., of the Metropolitan Tribunal of the Archdiocese of Chicago, at the nineteenth National Convention of The Canon Law Society of America held at the Adolphus Hotel, Dallas, Texas, October 15-17, 1957.

Laurence did not establish communal life with Louise although he did live with her occasionally when his work permitted. The couple gradually drifted apart and finally a divorce was obtained on April 4, 1930. On October 14, 1954, Laurence became a Catholic and presented his case shortly afterward so that he could be declared free to marry a Catholic woman.

Since the previous marriages took place in New England and Louise by this time was advanced in age (69), it was only through the good offices of one of the priests of the Diocese of Burlington, Vermont, that the meager testimony available was obtained. When the case had been constructed, there were doubts about the validity of the marriage of Laurence and Louise because of the probable pre-code impediment of Disparity of Worship and the probable impediment of Ligamen. George, the first husband of Louise, was of Irish extraction and no information about his religious background could be had. He may have been the child of Catholic parents, or at least one Catholic parent. The first marriage of George and Louise may itself have been invalid because of Disparity of Worship.

The case was sent to the Holy Office on November 8, 1955. The favorable answer arrive on February 9, 1957. The formal rescript, received on February 19, 1957, was worded, "An consilium praestandum sit Ssmo. ut concedatur documentum libertatis domino Hallett ita ut ipse, neo-conversus, coram Ecclesia valide et licite novas nuptias inire valeat cum catholica muliere." The answer was "AFFIRMATIVE" and the usual notification of the granting of the favor by the Holy Father on February 4, 1957, followed.

Diocese of Worcester:

TRIBUNAL USE OF CODE COMMISSION DECISION OF JUNE, 1947

A woman petitioned the Tribunal of the Diocese of Worcester to annul her marriage on the grounds of Ligamen. She married a man who presented himself as a Catholic, but whose baptismal record could not be found. He was baptized conditionally prior to the marriage, which took place in the Church in another diocese—not Worcester.

The couple moved to the Midwest, and the husband was arrested for failure to register for the draft. During the trial which convicted him as a draft-doger, the F.B.I. discovered the man was a

bigamist who used at least seven aliases. His first marriage was in San Francisco in 1933—there is no record of any divorce. Then in 1936 he married in Carson City, Nevada, using an alias. This lasted six weeks—the girl divorced him. In 1938, he married another girl in Corsicana, Texas—a divorce followed in 1940. In June, 1940, he married a girl at University City, Missouri, but this marriage was annulled in September, 1940, because on May 13, 1940, he had married a girl at Yuma, Arizona. In each of the above marriages he used a different alias. Records of these marriages were obtained by the Tribunal.

On January 31, 1942, he married the petitioner in the Church, failing to mention his marital escapades prior to that date.

The investigation made by the Tribunal of the Diocese of Worcester failed to disclose the present whereabouts of any of the wives of the defendant, their religion, or marital status at the time of their marriage. In view of this lack of evidence, and since it was impossible to find the defendant or to know his true religious status prior to 1942, the Sacred Congregation of the Holy Office was asked to give a decision.

The Holy Office responded on April 30, 1957, Prot. No. 2972/56m:

> Ad rem notum Excellentiae Tuae Rev.mae facio hac in causa procedendum esse ad normam interpretationis Pontificiae Commissionis authenticae interpretationis Codicis Iuris Canonici quae ad dubium: "an stante positivo et insolubili dubio de validitate primi matrimonii, invalidum, vi can. 1014, declarari debeat secundum matrimonium" respondit affirmative, dummodo causa definiatur ad ordinarium tramitem iuris.

After a solemn process, the Court of First Instance declared the marriage invalid on grounds of Ligamen. Case is now in process in the Court of Second Instance.

Diocese of Dodge City:

Bertha, an unbaptized non-Catholic, married Titus, a Catholic, *coram ecclesia* with the required dispensation. This marriage took place in 1944. Civil divorce in 1946. One child was born of the marriage.

Bertha took instructions in the Catholic Faith. The case was submitted to Rome, and Rome replied:

> Pro dispensatione super matrimonio rato et nonconsummato, ita ut oratrix, praevio baptismo.

Bertha was baptized in the Catholic Church—absolute baptism. The second attempted marriage of Bertha with a Catholic was convalidated. The second attempted marriage was in 1953. The dispensation from Rome permitted the convalidation.

ARCHDIOCESE OF CHICAGO:

PRIVILEGE OF THE FAITH—DISPARITY OF CULT CASE WITH NON-CATHOLIC PETITIONER

Titius, non-baptized, was married to Bertha, a Catholic, in a civil ceremony. Before the marriage Bertha told Titius that she did not intend to have children, but he did not think she was serious. When she persisted in this attitude after the civil ceremony, Titius persuaded her to have the marriage revalidated by a Catholic priest, with the proper dispensation, in the hope that she would change her mind about not having children. She did not change, and left him a month after the revalidation. The "*intentio contra bonum prolis*" could not be proved sufficiently, however, and the petition of Titius was rejected by the court of first and second instance, with the suggestion that Titius, who in the meanwhile became a Catholic, submit his petition to the Holy Office as a Privilege of the Faith case. The decision was favorable.

ARCHDIOCESE OF DENVER:

APPLICATION OF CANON 1127 BY THE HOLY OFFICE

Richard P., Catholic, married Beverly B., Jewess, after dispensation from disparity of cult. Marriage accused of invalidity because of insincere *cautiones*. During investigation, it appeared that marriage was invalid because celebrated before securing extra promise from Jewess. After the priest secured the extra promise, he called parties back for revalidation. He claimed marriage had been revalidated; both parties, without knowing importance of the point, denied revalidation. Parish records were obscured in register.

Decision, first instance: *non constat*. Because of strong doubts about validity, the case was forwarded to Holy Office with request that it dissolve natural bond *ad cautelam* in favor of the Catholic man. *Documentum libertatis* granted.

PRIVILEGE OF FAITH CASE

Thomas E., non-Catholic, married Betty W., non-Catholic. Marriage was accused because of defect of consent *contra bonum*

sacramenti. Decision *non-constat* in first instance. Evidence indicated non-baptism of defendant; further proof gathered and case was sent to Holy Office. *Documentum libertatis* was granted, upon conversion of the *actrix.*

ARCHDIOCESE OF CHICAGO:

DISSOLUTION BY THE HOLY OFFICE

Titius, born in Austria in 1899 of a Catholic father who was lapsed and a mother who was nominally Lutheran, was never baptized. He contracted marriage with Titia, a Jewess, in 1925 in Austria. One child was born of this union. In 1934 they separated and did not live together afterward as husband and wife. In August, 1939, Titius obtained a civil divorce in Leipzig, Germany; due to conditions created by the war, he obtained a second divorce in 1946. This clarified his position with the new Czech-Slovak government. To avoid the German persecution, Titia became a Catholic in Austria in the month of August, 1938. She is now living in an invalid marriage.

Titius married again in November of 1939 with Mary in Poland according to the laws of the Russian occupation group. Both Titius and his present wife, a Catholic, wish to have their union validated. Titius wishes to become a Catholic. The only proof we could obtain was a deposition from Titia, her brother, and her daughter to the effect that she had not been baptized until her Catholic baptism in 1938. Titius has no living relatives whatsoever; his only witness was a long time friend. Case was submitted to the Holy Office and we are still waiting for a reply.

DEFECT OF FORM INVOLVING A PERSON BAPTIZED IN THE GREEK-ORTHODOX CHURCH

John, baptized in the Greek-Orthodox Church, frequented the Roman Catholic Church—made his First Communion and continued to receive the sacraments in the Roman Catholic Church. At the age of 30 he contracted marriage with a Protestant in a Protestant Church. A few years later this broke up and she got a divorce. Now John wants to marry a Catholic girl. The facts were submitted to the Holy Office and the question was asked: "Was John held to the Catholic form of marriage according to the norms of Can. 1094?" The answer was: "Affirmative".

PRIVILEGE OF THE FAITH CASE INVOLVING A DOUBT ABOUT A POSSIBLE BAPTISM ON THE PART OF THE NON-BAPTIZED PARTY

Titius, a non-Catholic, married Bertha, a baptized Lutheran, and after a civil divorce and a subsequent civil marriage to a Catholic, contested the validity of his first marriage on the grounds of "*intentio contra bonum Sacramenti*" on the part of his first wife. His petition was rejected after a preliminary hearing, however, since Bertha denied his contention. Several years later the petitioner, Titius, expressed a desire to become a Catholic, and the case was reopened as a Privilege of the Faith case. At the time of the initial interview, Titius had stated that he was not baptized. Investigation disclosed, however, that he had, at the age of about 13, been present at the baptismal ceremony of his infant sister, under such circumstances that a doubt arose about his baptismal status. A neighbor lady had called her United Brethren minister to baptize the infant sister, which rite he performed by sprinkling. The three older children, including Titius, were grouped in the background to be included in this ceremony. The mother and the neighbor lady (who acted as godmother for the infant) were also present. The father and stepfather were non-practicing Catholics. Titius used to attend the Catholic Church as a child and showed preference for it. He was unwilling to become a member of the United Brethren Church.

The mother and sister of Titius testified that the water sprinkled on the infant would not have touched Titius. The neighbor lady who acted as godmother is now dead. The minister who performed the ceremony entered the name of Titius in his baptismal register.

The case was sent to the Holy Office; and a request was received, in return, for further information about the minister, his reputation, and the rite which he used. The minister who actually performed the ceremony was dead, but the present minister verified the presence of the name of Titius in the baptismal register, although he would not let the local priest inspect the register himself. The petitioner had in the meanwhile been received into the Church under a *frater-soror* arrangement. Additional proofs of the petitioner's sincerity were sent to the Holy Office. The final reply was favorable.

PRIVILEGE OF THE FAITH CASE INVOLVING A DOUBT ABOUT THE POSSIBLE BAPTISM OF THE NON-BAPTIZED PARTY

Titius, who had been baptized by a minister of the First Christian Church, married Bertha, who had been baptized as an infant in the Episcopalian Church. The minister of the First Christian Church who baptized Titius testified that the form of Baptism generally used by his church was the following: "I baptized you in the name of the Father, Son, and Holy Spirit to the remission of your sins." This minister also stated, however, that at the request of the father of Titius, the form which he used in the baptism of Titius was the following: "I baptize you in the name of Jesus Christ to the remission of sin." This latter form, he said, "is in accord with Holy Scripture and is considered a proper form by the Disciples of Christ." The investigation of the case left some doubt as to whether or not the latter form was actually used, however, and there was also a suspicion of collusion. The case was sent to the Holy Office. The reply was "*Non constat.*" The Holy Office was then asked whether the negative decision was based on a doubt about the validity of the form in question or on a doubt about the fact that such a form was actually used. The Holy Office replied that the formula: "I baptize you in the name of Jesus Christ to the remission of sins" was clearly invalid, but that clearer proof must be obtained that this formula was actually used in this case. The case is still pending.

REGARDING THE *votum* IN PRIVILEGE OF THE FAITH CASES

Chicago has the judge write the *votum* in English. The Ordinary merely signs a covering letter stating that according to the norms of the decree of the Holy Office in 1934 he is sending a case to the Holy Office with the written *votum* of his delegate. Rome has passed some of these cases already.

CASES WITH MINIMAL PROOF

1. Bertha married Sam in 1935. The marriage broke up about 1938. A child was born. Bertha was not baptized until she became a Baptist in 1942. In 1945 she was baptized a Catholic. The problem was to establish non-consummation after the Baptist baptism. Sam could not be found, nor any of his people. Sam's baptismal status was simply unknown. There was no civil divorce. Sam was known to lead a loose moral life. After 1942 Sam would

visit the children; he even paid some of their bills. Bertha testified that they were alone together on some occasions, but that there was no consummation. She said that Sam was not interested and did not ask her; once when she teasingly asked him, he walked out. After 1942 Bertha had another child but she said this was not Sam's. Bertha admitted that no one would be able to testify to the non-consummation except Sam who could not be found. Witnesses testified that Sam came to visit the children, but the visits were short and he would not stay. Case was sent to the Holy Office. The Holy Office asked that the proof of non-consummation be strengthened, the defendant be interrogated, and the credibility of the petitioner be investigated. We replied that the proof of non-consummation could not be strengthened especially in light of the petitioner's own testimony, and that the defendant could not be found. A character letter from the parish priest was sent. Rome then asked that the petitioner be interrogated (which already had been done) about non-consummation after 1942, and that her further credibility be further investigated. The petitioner's testimony to non-consummation after 1942, and character letters from two priests and two of the petitioner's friends were forwarded. Case was passed in *favorem Fidei.*

2. Privilege of the Faith case with little testimony and little co-operation. The problem was to prove the defendant's non-baptism. The defendant would not testify, but told the priest he was not baptized and signed his name to that statement. The father of the defendant refused to testify but the priest was told " I think he was not baptized." His mother testified under oath that he attended a Baptist church, but that he was not baptized; this was the only sworn testimony in the case. His sister refused to testify but told the priest, " I have a faint recollection that he may have been baptized when he was 13 years old." The defender of the bond raised the roof over just one witness, etc. Rome replied: ask his sister why she thinks he may have been baptized. The sister again did not testify but she talked to a priest who wrote: " It is hard to have a reason for a faint recollection of baptism." The sister thought that if he were baptized it would have been in the Sleepy Hollow Baptist Church; this church had no record of the defendant. Case passed.

3. Privilege of the Faith case with slight proof. The problem was to establish the non-baptism of the petitioner. Her parents

were dead there was only one sister six years younger than the petitioner; no other relatives available. The petitioner testified that she had never asked her parents if she were baptized, but she recalled her mother telling her father, "You know, Alice (the petitioner) was never baptized." This conversation took place when the parents had her younger sister baptized a Methodist in her early years. The younger sister testified that the petitioner was not baptized and that "the family used to say she was not baptized." Three other witnesses who were interrogated did not know whether or not the petitioner was baptized; one had heard the petitioner and her sister say the petitioner was not baptized; one said that the parents were not church-goers when the petitioner was young. The case was further weakened since the petitioner's grandfather was a Methodist minister. The search of records revealed nothing, not even the record of the sister's baptism. The defendant, moreover, testified that he thought, but was not sure, that the petitioner was baptized, and that he based this on "knowing her parents and the Christian home they kept and her grandfather being a minister." He thought that the grandfather minister would have baptized her if he knew she was not baptized. Case passed.

DIOCESE OF TUCSON:

PERMISSION FROM HOLY OFFICE TO TRY AGE CASE INFORMALLY

Most Holy Father:

Naomi, a baptized non-Catholic, humbly prostrate at the feet of Your Holiness, respectfully requests permission to stand as plaintiff in a trial of non-age before this Tribunal, according to Canon 1990. We have on hand her baptismal certificate, certifying to the fact that she was baptized in the Union Mission Church in Mena, Arkansas, on December 10, 1939, by Reverend I. K. Mourton. This document gives the date of her birth as December 7, 1930. We were unable to obtain a civil birth certificate, because the records were not kept in that State in those years, but we have the testimony of her brother, six years older, verifying this date, and of a sister, four years older, stating that Naomi was born on December 7, 1929. Her father is dead, and her mother is bitterly anti-Catholic and will not co-operate.

The marriage certificate shows that on January 6, 1943, Naomi married Frank before John T. Webb, a minister. She was, there-

fore, only 12 years and one month old at this time according to the date of birth given on her baptismal certificate, or 13 years and one month old, according to the testimony of her sister.

The reason for requesting the permission is that so much time has already been consumed in trying to prove the invalidity of this marriage on the grounds of *ligamen,* and because of the great delay and expense that would be encountered if this cause were to be tried according to the usual norms of Canon Law.

Naomi is very anxious to have her present civil law marriage with a Catholic man rectified so that she can enter the Church. Accordingly, I respectfully recommend the petition of Naomi and add my plea to hers, that she be permitted to act as plaintiff according to Canon 1990.

SUPREMA S. CONGREGATIO
SANCTI OFFICII — Ex Aedibus S. Officii, die 28 maii 1957

Prot. N. 1279 m/57

Exc. me ac Rev.me Domine,

Litteris die 10 maii a.d. datis, Excellentia Tua Rev.ma postulavit pro acatholica NAOMI facultatem standi in iudicio coram tribunali ecclesiastico ad accusandum nullitatis matrimonium ab ea contractum cum FRANCISCO anno 1943.

Ad rem notum facio hanc Supremam S. Congregationem concessisse gratiam qua oratrix, etsi actholica, accusare valeat matrimonium de quo supra apud tribunal ecclesiasticum.

Hanc occasionem nactus, impensos aestimationis meae sensus Tibi pando permanens.

Excellentiae Tuae Rev.mae
addictissimus

/s/ CARD. PIZZARDO

DIOCESE OF OGDENSBURG:

The Diocese of Ogdensburg received permission for the priests to binate on week days on the occasions of weddings, funerals, or First Fridays, and also to take a second stipend on these days provided that the stipend for the second Mass be forwarded to the Bishop to be used in some worthy cause which he designates.

I do not know whether such permission is unusual, but if you wish any further information, we will be glad to oblige.

DIOCESE OF SPRINGFIELD-CAPE GIRARDEAU:

REASON FOR BINATION ON WEEK DAYS

SACRA CONGREGATIO DE SACRAMENTIS

Prot. Num. 668/57

BEATISSIME PATER, Ordinarius Campifontis-Capitis Girardeauensis ad pedes S.V. provolutus, humiliter postulat facultatem permittendi suis sacerdotibus ut bis Sacrum litare valeant diebus ferialibus:

1. Primis feriis sextis cuiusque mensis;
2. Occasione Matrimonii vel Missae Exsequialis;
3. Sextodecimo quoque die ad renovandas S.Species in capellis religiosarum;
4. Quoties Missa ad normam Const. Christus Dominus horis vespertinis celebretur, ob cleri penuriam.

Die 18 Februarii 1957 Sacra Congregatio de Disciplina Sacramentorum, vigore specialium facultatum Card. Praefecto a Ssmo Dno Nostro Pio Papa XII tributarum, attentis expositis, Ordinario Campifontis-Capitis Girardeauensis gratiam benigne indulget iuxta preces, dummodo nullus alius sacerdos liber praesto sit pro celebratione alterius Missae, vetita celebranti eleemosynae perceptione pro secunda Missa (Can. 824) aliisque servatis de iure servandis.

Contrariis quibuslibet minime obstantibus.

Praesentibus valituris ad triennium.

/s/ B. CARD. ALOISI MAZELLA, *Praef.*

ARCHDIOCESE OF PORTLAND IN OREGON:

Recently we have received an affirmative reply from Rome in two instances in which permission had been asked for a Catholic to be permitted to enter sacramental marriage after having been divorced from a non-baptized person. These marriages had taken place before a priest with a dispensation of Disparity of Worship.

CHURCH INSURANCE IN GENERAL AND THE DEDUCTIBLE FIRE AND EXTENDED COVERAGE PLAN *

I am pleased to have this opportunity to accept our Most Reverend President's invitation to talk about Church Insurance to a group of priests whose interest in the material as well as the spiritual welfare of the Church in this country is notable in this era of Catholicity. Also again the open minded spirit of Texas is evident in the large group present at this convention, and I hope that in the same kind manner in which Texas has received us, you will also receive the suggestions and proposals of this paper. Like you, I was given no special training in business in the Seminary but also like you, the school of experience has taught me some things which I gladly pass along to help perhaps or at least to add to the knowledge sacred and profane of your assignments given to promote the greater glory of God.

A review of Theology and in particular Church Law, concerning Insurance, proved to be of little help to guide one. However, Canons 1522 and 1523 and Moral Theology clearly note the obligations on the part of pastors and administrators about the supervision and care one must give to church property. Naturally, the obligation of the chief pastor in a diocese even more so is very evident, as one could note in the Pontifical during the anointing with holy chrism of the bishop among other invocations the words, " Let him be the faithful and prudent servant whom Thou, O Lord, dost set over Thy household, to give them food in due season, and to lead every man to perfection." The sleepless nights of more than one Ordinary in our country in the matter of the best and the safest guardianship of the diocesan physical properties could be averted by adequate coverage and indeed all of us who have had any experience in Chancery work know how well and painstaking are the efforts of the Bishops to guard as zealous shepherds these properties, worth today, due to the generosity of American people, almost unnumbered millions of dollars in Churches, Schools, Auditoriums,

* Address delivered by the Right Reverend John F. Gannon, Vicar General-Chancellor, Diocese of Worcester, at the nineteenth National Convention of The Canon Law Society of America, held at the Adolphus Hotel, Dallas, Texas, October 15-17, 1957.

Convents, and Rectories, included of course the Chancery offices themselves. Hence, it is that cold statistics even of the past year make painfully evident the duty of Bishops, Pastors, Administrators and Religious Superiors to safeguard properties even at the loss of considerable time, which more holy souls perhaps say should be spent in communion with the things not of this world.

In the past year alone, fires have damaged or destroyed over 50 churches in the United States. Some were due to arsonists, of that number perhaps 15; but the majority appear to be accidental. Defective wiring and defective heating are some of the reasons, other causes are simply listed as unknown or the word " undetermined " is employed. Mr. Horatio Bond, a spokesman for the National Fire Protection Association, says responsibility for much of the destruction rests on architects who ignore church fire problems. Be that as it may, loss of valuable church property is almost but not quite a weekly occurrence. It is true the arsonists make the headlines when we recall:

1) St. Mary's R. C. Cathedral, Trenton — 3 persons died
   3½ million loss.
2) St. Joseph's, Hartford — — — — — — 3 million loss.
   and another Church in that city
   St. Patrick's — — — — — — — — — $250,000.00 loss.
3) St. Louis' Church, St. Paul, Minn. — — $41,500.00 loss.
4) St. John the Evangelist,
   Cambridge, Mass. — — — — — — — over 1 million loss.

And so I could go on, but common sense and your patience must be considered. As a famous American once said, " Look at the record." Enterprising insurance companies are only too willing to furnish such records, and which are only too true. You will be convinced that it is our duty to do what we can to provide every adequate measure of protection for now and in the indefinite future against insane people and against what I always consider as erroneous—the legal phrase when used by insurance companies—" an act of God ", as though God, the author of all good, could even indirectly be blamed for mechanical failures of finite objects.

Insurance wise, the business of the physical church has grown of necessity to be a complicated and confusing picture. It is a fact that fire and extended coverage today is only one section of the

Protection Drawer every Chancery has ready for reference. Accident and health plans for the clergy and sometimes for lay employees; workmans' compensation; automobile coverage with the advantages of the "fleet" plan; boiler insurance; building and construction types of coverages, and of late, valuable artistic treasure policies, take many an hour of time for the Chancery priest to help the Bishop fulfill that part of his stewardship.

Only reputable companies, whose experience and financial standing may be and should be proved by professional firms, should be engaged. Our responsibilities are not our own personal property, and therefore we must be doubly prudent to engage top flight, recommended companies. The employment of insurance firms whose financial credit and management are not sound has caused grief to the best intentioned priest as well as to laymen.

As to whether the parish or the diocese should be responsible for insurance placements and collections, wisdom dictates the latter. Better supervision, better bargaining rates and the benefit of permanent long range thinking on the part of the diocese, which will and must outlive the life of any pastor and even any parish, (again in a strictly business way,) seem to be always preferable. Individual diocesan and synodal statutes, however, determine the respective plan in each diocese; the Church has no definite legislation on this point.

In some dioceses self-insurance plans have operated in a successful manner, I understand, and when properly handled and controlled should prove beneficial as well as economical. Certain legal requirements must be met with in this type of insurance. In some parts of the United States, where various state regulations are different, this plan could be employed only with the risk of definitely going "into business" and then being open to the charges which those who do not understand and therefore dislike us, would hasten to cast at us. Then, too, in certain states and localities, narrow-thinking Catholics would feel that "the bread was being taken out of their mouths" if positions were closed to them because the Church conducted their own business. However, in regard to that charge, I know of a certain diocese which changed its insurance plans for better coverage and more economic savings, where the employees of the firm which formerly handled the account very quickly obtained positions in other companies, all receiving a

raise in the weekly pay envelopes much better than they had received for years from the firm which employed them and benefited from church business.

The average small diocese which cannot, because of financial reasons, enter self-insurance or does not wish for one reason or another to pool interests with similar neighboring dioceses to form a Company, as a rule must place its insurance with some company, either a Mutual Benefit Company or one of the many agencies or insurance brokers, who will in turn buy up protection for the client or, should I say, diocese, with various reputable insurance companies throughout the length and breadth of our country and sometimes even outside the American possessions, such as Lloyds of London. Such brokers have served the Church well, I will admit. And although they have benefited considerably, I also admit, in a personal gain allowed to them by civil law, they have and will continue to protect and help the Church in time of loss which they have insured for.

Monsignor George Mulcahy, of the Diocese of Harrisburg, some years ago wrote an illuminating paper printed in the American Ecclesiastical Review in 1947. It was entitled "Understanding Church Fire Insurance." I certainly would recommend it to your attention, today, ten years later. It is as timely now as then for us whose labors call us into the somewhat murky pool of insurance, which the wise steward must enter to protect his stewardship.

Monsignor Mulcahy noted, in somewhat forceful language, the evident truth that deplorable conditions sometimes prevail in regard to insurance protection on Catholic Church property and in the business methods by which such protection is obtained. It is not my purpose to repeat even briefly his illuminative treatise, but I do ask you to read his paper if it is in your Chancery library; if not, try to have it included. The 80% coverage clause explanation, the awarding of the average contract and the adjustment problems of settlements are a particularly noteworthy part of this paper. You who have charge of the "keys", as the expression goes, would do well to have in your library the blue print drawn by Monsignor Mulcahy. (We cannot afford today to do otherwise than common sense and plain prudence dictate.)

The Aetna Life Insurance Company, whose headquarters are located in the State of Connecticut, a state, which for one reason or

another is notable for many Insurance Companies, published recently an interesting book of the history of that company, noting that there are three essentials of life insurance solvency which may be easily made a " must " for any kind of insurance including the coverage we are mainly interested in because of the expense—Fire and Extended coverage. These essentials are:

1) A careful selection of risks.
2) Insistence upon economy of operation.
3) Sound, yet remunerative investment offered.

For the past several years, in this country, many large manufacturing concerns and other business organizations with " spread out " properties have been searching for coverage which would embrace the three essentials followed by Aetna Life and other insurance firms. Of necessity, hard-headed business people, responsible to stock holders, forced to show a profit or go out of business, have turned to so-called Deductible Insurance with considerable success. The risk is small and worth considering. In this plan 100% coverage is given, not 80%, and what is most attractive, the annual premium is almost ⅔ less than the old common type of insurance carried by business firms and church properties not self-insured. I feel that before bringing this paper to an end, from personal experience plus the studied experience of business firms this type of insurance for church properties in regard to Fire and Extended Coverage should be explained. I am not in any way an agent for any firm which sells this type of coverage. I am not an authority on it, but I can suggest to you competent authorities who could give your diocese without cost to you a separate study and recommendation. Up to now, in my poor opinion, it is the best solution to the problem which must be faced by everyone who is responsible for large properties sometimes widely separated. It is at the same time the most economical.

"Deductible" is the term used to identify a true excess of loss or castatrophe coverage under which, for a consideration in the rate, an insured, at his own election, stands the first part of the loss out of his own pocket.

This plan contemplates deductibles of substantial amounts. The varying deductible amounts receive credits based upon a prepared schedule filed with the Insurance Departments of many states in full compliance with civil legal requirements. This plan is not to be

confused with small deductibles which can be a part of Extended Coverage endorsements to eliminate on the part of the insurance company expenses in handling small claims and to keep down the cost of insurance, such as windstorm, from becoming too expensive.

To further simplify it, this plan provides a method whereby property owners, self-insuring or wishing to self-insure for a definite limited amount, may legally purchase insurance for the remaining value of their property. In other words, the owner of any property and in our particular interest, the diocese with a valuation for example of $50,000,000.00, may elect to carry a deductible of $50,000.00 or $100,000.00; the premium paid out to the insuring company will cover all losses over and above the deduction. Actually this plan is employed by insurance companies themselves who place such plans with large companies and in London Lloyds. It is just now that our American business firms, learning that insurance of this type was placed abroad on a deductible basis, opened the market to keep such business "at home", so to speak.

There is a contract which your attorney should check for such types of insurance. The program involves an endorsement to standard forms and policies under which for a fixed credit the deductible amount selected by the insured is made a part of the policy contract.

The wording usually states "each claim for loss or damage separately occurring shall be adjusted separately and from each such adjusted claim the sum of $_____ shall be deducted."

Also a feature to note in the contract is the clause that the deductible may not be otherwise insured; hence the wording "It is a condition of this policy that the deductible specified above of $_____ shall be solely at the risk of the insured and shall not be covered under any other policy of insurance".

Experience taught the insurance companies who sell this type of protection that the requirement for the insured to stand the deductible out of his own pocket will give the insured a very strong incentive to maintain good housekeeping methods as well as to observe every fire prevention and fire protection standard. Hence, the recommendations of the National Board of Fire Underwriters, the National Fire Protection Association and the rating bureau will have a greater appeal and be consequently more effective where neglect resulting in losses may be absorbed by the insured himself. Actually in most dioceses I am very sure that the average supervisor

of church property is most solicitous over the material property intrusted to his care; however the above condition provides an even greater incentive to good housekeeping.

The deductible plan of insurance, as I noted, is receiving much attention of late years. The Insurance Department of New York State approved it in June of 1950. Since then it has been approved by thirty-two additional states and the District of Columbia. Also their plan grants protection through legal means and appears "tailor made" for church properties whose valuations exceed hundreds of thousands of dollars.

The operation of this deductible plan of insurance is really very simple and does not require additional Chancery help or increased office space. Even bookkeeping is kept to a minimum, and an annual bill, based on computations performed by the agent of the company, is sent out by the Chancery to each parish. The contract with the insuring company or agent acting as a broker is renewed each year, after a conference with the representatives of the diocese such as the Chancery staff. This contract may be added to or subtracted from, depending on the experience of the past year.

The operation of the plan requires a complete up to date survey or examination of all properties to be insured, performed by a reputable staff of the National Underwriters, paid for by the insuring company. This staff will mail reports immediately to the Chancery in duplicate. One report is sent back to the parish or institution asking that the recommendations, if any, be followed. Also, photographs of each property kept on file in the Chancery Office provide information which can be an aid in eventual settlements or losses.

Some dioceses also have required of late, that up to date fire alarm systems and even sprinkler systems be installed in every building. Other dioceses advise and strongly urge that such protective systems be installed, but the decision is left to the judgment of the person in charge of a particular property.

It is a fact, in spite of our modern safety equipment, that not only is the annual loss of life and property due to fires in the United States staggering, but yearly it exceeds the previous year records. In 1956 fire loss was estimated by the National Board of Fire Underwriters to be $989,280,000.00, 12% higher than in 1955. The first *quarter* of this year, 1957, the authenticated figure was over $315,000,000, a 16.7% increase over a year ago. Of that sum, a not

inconsiderable amount was the Church's contribution in fire losses.

The best way to reverse this disastrous economic and human life loss, which is a part of the picture, is the use of a reliable fire alarm system, which will quickly detect a fire and sound an immediate warning.

There are for sale on the market many varied systems. Each one has its assets, and the eloquence of the salesman guarantees a justifiable feeling of security against man's greatest friend and sometimes most terrible enemy. However, what is desired is a proper, approved fire alarm system for every type of Catholic building—churches, schools, hospitals, rectories and orphanages. All should be protected, some by their nature differently than others.

An approved fire alarm system, meeting the standards of a national testing laboratory in compliance with state and municipal building and fire codes, is the type and only the type worth installing. Any architect, engineer and a representative of the local Fire Department should be consulted before finally selecting the system you contract with for protection. Hence, any system approved by the National Fire Protection Association, which is considered good, is worth installing. In particular you will find, I am positive, the utmost cooperation with the local fire department in your choice of the proper approved system. You will be given every aid by the fire department, whose only purpose is to protect and to save property owners from loss of life as well as property.

May I suggest therefore the following signalling arrangements for the Modern Fire Alarm System copied from the July-August C.B.M. —Catholic Building and Maintenance periodical.

1. Common-coded—All alarms sound the same signal (such as 4-4) on single stroke bells or horns. This arrangement is suggested for small buildings, such as one-story schools, where an evacuation signal is desired without locating which station has been operated.

2. Coded—Operation of a pullbox sounds the code of that particular box on all alarm bells or chimes. This system is suggested for large buildings, such as high schools, where the exact location of a fire must be known. It serves a dual purpose, evacuation and fire location.

3. Pre-signal—An alarm sounds a predetermined signal for administrative personnel, who investigate the location to learn if a general alarm is warranted. A general alarm can then be sounded

from any box by authorized persons having a special key. This system is recommended only for buildings like hospitals, homes for the aged, where administrators are on duty at all times.

4. City Connected—Automatically transmits alarm signals to municipal headquarters. It is arranged so that trouble on the local system does not affect operation of the city system. Suggested for installations where the street box is remote from the building being protected.

5. Non-coded—For use where a coded signal is not desired. Operation of any one station causes a general alarm. This is the simplest and least expensive of the supervised signal units.

6. Sprinkler-signal—For installations protected by sprinklers, a water-flow alarm signal can be connected to the fire alarm system control panel. Where a coded system is used, a special code can be assigned to the water-flow alarm.

7. Unit-and-general—Recommended where several buildings are grouped around a main central building on a single piece of property, such as a college campus. A fire in any building will sound an alarm in that building and simultaneously in a central or main building, but will not set off alarms in the other structures.

The appearance of the system can be suitable and not unattractive to satisfy the good taste of the architect and still accomplish the purpose intended. *Warn against fires.* As church lighting engineers have progressed from old, antique, sometimes ugly lighting fixtures to the modern, functional and at the same time, decorative installations of today, so too, investigation will prove, have the fire alarm installations.

The cooperation of the parish priests and the lay employees of the church is needed to guarantee maximum security. An oral explanation of this Deductible Plan, at a clergy conference for example, noting the benefits to all concerned, will bring a ready and sincere effort to help the success of this mutual sharing benefit.

Also Chancery Offices, when submitting the annual bill, could briefly reiterate the opportunities for saving with security in order to continue the usefulness of the plan. Letters asking for special vigilance at particularly hazardous times of the year, such as the Christmas seasons and the prolonged cold snaps in the winter, will help priests, janitors and all to whom the responsibility of the stewardship of property is given.

I may add that the company, which sells your deductible insurance will naturally be delighted with every protective device installed, but up to now such protection is not a *sine qua non* of the contract.

Just how individual losses will be settled under the deductible rate is left entirely to the owner, as remember he is self-insured to that extent, and the company has no interest until the loss falls within the range of the contract.

As to the settlement of small losses not covered by the insurance company, the simpler method may be to have the pastor or superior receive estimates from at least two reputable contractors, report same to the Chancery, and then with the Chancery's permission award the contract, have the damage repaired and send the bill to the owner, the diocese, to pay. Remember that 100% loss damage is the guarantee in this type of insurance, not 80%, as is commonly granted in the other type of insurance coverage.

If a diocese does not have sufficient funds allocated for losses,—and what diocese today of necessity faced with building programs has funds unemployed?—the same rates as charged formerly by the other insurance method, 80% coverage only, may be levied. After a few years sufficient funds will be available as a necessary cushion, and then the annual premium may be considerably reduced on each parish to the unbounded joy of the hard working pastor or administrator and his parish or institution. This "cushion" fund can be wisely invested in safe securities approved by Church Law, and the profits therefrom may be available for the use of the diocese to the greater progress of the Church.

Statistics and experience are a guide, or should I say the success of any operation. The first year or two may therefore not prove this system particularly worth while, but five years or ten years at the most will prove that the savings accumulated, plus the element of security by the Deductible Fire and Extended Coverage Plan, always present against a major catastrophe, is well worth the investment of church funds.

In closing, I may add that this new advance in the insurance field should be entirely optional to enable an insured to deal with established and approved companies on a plan legally filed and subject to the approval of the Insurance Department of his own state. Also if he so wishes he need not look any further than the local agent in

his own town, city or diocese; and he should obtain the same coverage with the same serviec that can be purchased anywhere in this country.

With appreciation indeed for your attention and with the hope that this paper may have aided you, whose responsibilities are great before God and men, to do the best you are able for our Holy Church, I close with the words of S. John's Gospel, C. 4, v. 38, which can apply to all of us:

> I have sent you to reap that in which you did not labour; others have laboured, and you have entered into their labours.

BLENDING OF ALTAR WINES *

At some clerical gatherings mention has been made not to mix altar wines, because a chemical reaction will result.

As regards the blending of these wines, there is no knowledge of any chemical reaction that can take place. There are no chemicals in altar wines. The only effect achieved in blending is the reduction or increase in alcoholic content; accordingly 18% alcohol is reduced and 12% alcohol is increased in the wines. The mixture diminishes the dryness or the sweetness. Thus Haut Sauterne and Angelica may be blended to the desired effect. Monasteries obtain the dry wines and the sweet wines and make their own blends.

* Reported from correspondence with a Distributor of Altar Wines submitted to *The Jurist* by the courtesy of the Reverend Benedict Pfaller, O.S.B., Assumption Abbey, Richardton, North Dakota.—Editor's note.

Decrees and Decisions

CANONICAL

RECENT ROMAN DECREES *

The reformulation of Canons 808 and 858 on the Eucharistic fast to be observed by priests celebrating Mass, by other communicants and by the sick, as well as the derogation from the prohibition of Canon 821, § 1, forbidding Mass after 1 p.m., was notably advanced by Pope Pius XII's Motu Proprio of 19 March 1957, *Sacram Communionem*—49 *AAS*, 177.

Its prescriptions, in effect since March 25, are as follows:

1) Local Ordinaries (excluding Vicars General without a special mandate) may permit the celebration of Mass in the evening on any day that the spiritual good of a notable number of the faithful requires it.
2) The time of the Eucharistic fast to be observed by priests before Mass and by the faithful before Holy Communion, morning or evening, is restricted to three hours for solid food or alcoholic drink; to one hour for non-alcoholic drink. Drinking water does not break the fast.
3) The times prescribed above for the Eucharistic fast must be observed by those who celebrate Mass or receive Holy Communion at midnight or in the early hours of the morning.
4) The sick, even though not bedridden, may drink non-alcoholic liquids and take true medicines properly so-called, whether liquids or solids, at any time before celebrating Mass or receiving Holy Communion.

Cardinal Ottaviani, Pro-Secretary of the Sacred Congregation of the Holy Office, commented on the Motu Proprio in an article entitled *"Il digiuno Eucharistico"*, which appeared in June in the first number of the periodical *Studi Cattolici.* Hürth draws heavily upon

* Reported by the Reverend Thomas A. Brockhaus, O.S.B., J.C.D., at the September 1957 regional meeting of The Canon Law Society of America held at Gearhart, Oregon.

this article in his lengthy *Annotationes* in the June number of *Periodica,* pages 220 sqq. He analyzes the relationship of *Sacram Communionem* to the Apostolic Constitution *Christus Dominus* and its accompanying Instruction of the Holy Office.

In August, an NC news release reported some of the interpretations given by Cardinal Ottaviani. The first was that Holy Communion may not be distributed in the evening outside of Mass, but only during Mass, or immediately before, or immediately after Mass. Solid food, like candy, he went on to say, cannot be considered a liquid even though it be dissolved in the mouth before being swallowed. Thirdly, if three hours or more elapse between Masses offered by a priest on the same day, he must take both wine and water at the ablutions of the earlier Mass, in compliance with the prescriptions of the rubrics.

According to another recent NC news release, the Sacred Congregation of the Council by a Decree of July 25, 1957 transferred permanently and universally the fast and abstinence prescribed by Canon 1252, § 2, for the Vigil of the Assumption (August 14), to the Vigil of the Immaculate Conception (December 7). The reason mentioned was the many difficulties urged by many Ordinaries of various nations.

On February 1, 1957 the Sacred Congregation of Rites issued further directives and clarifications regarding the Restored Order of Holy Week.—49, *AAS,* 91.—The new document is an amplification of the *Declaratio* of March 15, 1956, which it replaces.

It introduces an intermediate rite between the simple and solemn forms of the service, permitting the use of a deacon without a subdeacon. This deacon may vest as a deacon, chant the Gospel and the Passion (except for the part of Christ, which is reserved to the celebrant), also the *Exsultet,* the lessons, and such directions as the *Flectamus genua,* the *Levate,* and the *Benedicamus Domino* or *Ite, Missa est.* In a word, he may perform the functions of the deacon. The new directives also empower the local Ordinary to give permission for the Blessing of the Palms, the Procession and the Palm Sunday Mass in the evening; but not in the same churches where these functions were carried out in the morning. It is forbidden to bless the palms without holding the procession and Mass that follow. The palms may be blessed in any suitable place, even in the open air. The procession starts from the place where the palms are

blessed (thus derogating from the classical definition of a sacred procession in Canon 1290 as a progress from one sacred place to another). Blessed palms should be made available to the faithful who do not take part in the procession.

On Holy Thursday evening the Mass of the Lord's Supper may be begun at any time from four to nine o'clock. This is an hour earlier and an hour later than was allowed by the original Restored Order. Holy Communion may be brought to the sick, even those not in danger of death, at any time on Holy Thursday.

On Good Friday, the services may be begun at any time from noon until nine o'clock in the evening. This is three hours earlier and three hours later than was allowed by the original Restored Order. If the people cannot approach the altar rail for the adoration of the Holy Cross, as prescribed, they may remain in their places and adore for a short time in silence while the celebrant holds the Cross aloft as he stands on the top step before the altar.

The hours for the celebration of the Easter Vigil are left unchanged, and in this case the new directives are stricter than the General Decree of November 16, 1955, since they require "grave reasons", which were not mentioned in the Decree, to warrant the local Ordinary's permitting anticipation at an hour earlier than midnight. The authority to grant this permission is further restricted to particular cases. Cathedral churches and those of religious are mentioned as having a special obligation to observe the proper midnight hour for the Vigil Mass. Contrary to the provision of the Instruction of November 16, 1955, the new directive states that it is not fitting to confer Holy Orders during the Easter Vigil Mass.

The Vatican Press is now advertising all the books promised for use in the Restored Order of Holy Week: Missal, $3.40; Chant for the Passion in one volume—$1.80, in three volumes (*Chronista, Christus, Synagoga*)—$5.40; *Cantus Gregoriani* for the Roman Gradual and Antiphonal, $.50; *Ritus Simplex Ordinis Hebdomadae Sanctae Instaurati,* $.90; *Ritus Pontificalis Ordinis Hebdomadae Sanctae Instaurati,* $1.00.

The Church's official stand and policy on a number of points hitherto debated by liturgical theorists was expressly formulated in Pope Pius XII's Address of September 22, 1956 to the delegates attending the International Congress on Pastoral Liturgy at Assisi. —48, *AAS,* 711.

One of these points is epitomized in a Reply to the Holy Office, given on May 23, 1957—49, *AAS*, 370: For the valid concelebration of Mass it is necessary to pronounce the words of consecration; it does not suffice to unite one's intention with that of the celebrant when he pronounces them.

Hürth comments at length on this Reply in his *Annotationes* in 46, *Periodica*, 244.

Some more practical directives based on the Holy Father's Address are contained in a Decree of the Sacred Congregation of Rites issued on June 1, 1957.—49, *AAS*, 425. After urging the observance of Canon 1268, § 2, and Canon 1269, § 1, and referring to the Pope's Address, the Sacred Congregation decreed the following:

1) The norms of the Code of Canon Law regarding the reservation of the Blessed Sacrament (Canons 1268, 1269) are to be religiously observed. Local Ordinaries are to keep a watchful eye on this matter.
2) The tabernacle must be so firmly attached to the altar that it cannot be removed. As a rule it is to be placed on the high altar, unless another be better adapted to the worship and devotion due to this Sacrament; which is usually the case in cathedral, collegiate and conventual churches where choir services are held; and sometimes in popular shrines where the devotion of the faithful directed to some other object would detract from the supreme honor due to the Blessed Sacrament.
3) The Sacrifice of the Mass is to be habitually celebrated at the altar where the Blessed Sacrament is reserved.
4) In churches having only one altar, this may not be so constructed that the celebrant face the people; but the tabernacle for the reservation of the Blessed Sacrament must be placed in the middle of this altar, built in conformity to the laws of the liturgy and in a style and size worthy of so great a Sacrament.
5) The tabernacle must be so strong and secure as to preclude all danger of profanation.
6) When the Sacred Species are reserved in the tabernacle, it should be covered with a canopy and, following the ancient tradition of the Church, a perpetual light should burn before it.
7) The style of the tabernacle should harmonize with that of the altar and the church; it should not depart radically from the

styles hitherto in vogue; it should not be reduced to the appearance of a mere cupboard, but should seek to represent the true dwelling place of God among men; it should not be adorned with unusual symbols or figures, or such as would inspire wonderment in the faithful, or might be erroneously interpreted; or do not have reference to the Blessed Sacrament.

8) It is strictly forbidden to place the tabernacle for the Holy Eucharist away from the altar, for example, in a wall, or at the side or behind the altar, or in a niche or column separated from the altar.

9) Any contrary custom regarding the manner of reserving the Blessed Eucharist or the form of the tabernacle cannot be presumed unless the custom be centenary and immemorial (cf. Can. 62, § 2,[1] as, for example, the case of tabernacles built in the form of towers or shrines. But these styles may not be copied.

So far recent Decrees on the Liturgy.

A Reply of the Holy Office on January 31, 1957 (49, *AAS*, 77) states that affinity contracted between persons not baptized becomes an impediment to marriage to be contracted after the baptism of either one of the parties.

On the day before, namely January 30, 1957 (49, *AAS*, 77) the Holy Office issued a Decree placing on the Index two works of Michael de Unamuno: *Del Sentimiento trágico de la Vida* and *La Agonia del Cristianismo*.

On May 26, 1957 Pope Pius XII delivered an address to the Italian Association of Catholic Jurists on the rehabilitation of prisoners.—49, *AAS*, 403.

On September 11, 1956 Pope Pius XII delivered a radio message to the Seventh International Convention of the International Catholic Medical Association meeting at The Hague, in which he elaborated on the relation of medical practice to law and morals. This recent statement of the principles of medical ethics is important in the series of the Holy Father's addresses on the subject in that it coordinates the subjects previously treated and furnishes a clear statement of the Church's position in areas of debate. It contains an excellent treatise on the right to life, which is useful

[1] *Sic* in *AAS, loc. cit.* Can. 63, § 2?—Editor's note.

and necessary in meeting the current challenge of the American Euthanasia Society.—48, *AAS,* 677.

In rapid succession, on October 28, November 1, and November 5, 1956, Pope Pius XII issued the Encyclical Letters *Luctuosissimi eventus, Laetamur admodum* and *Datis nuperrime,* asking the prayers of the world for the persecuted Church in Hungary.—48, *AAS,* 741, 745, 748.

On May 16, 1957 Pope Pius XII issued an Encyclical Letter on Poland, *Invicti athletae.*—49, *AAS,* 321.

On April 21, 1957 Pope Pius XII issued an Encyclical Letter on Catholic missions, especially in Africa, *Fidei donum.*—49, *AAS,* 225.

On February 26, 1957 a Concordat was signed between the Holy See and North Rhineland-Westphalia. The Concordat of June 14, 1929 between the Holy See and Prussia was cited throughout as still in effect. The new Concordat provided for the establishment of the new Diocese of Essen, with a Bishop Ordinary, an Auxiliary Bishop and a Cathedral Chapter all supported by the State. The Holy See was represented by Archbishop Muench of Fargo.—49, *AAS,* 201.

On November 3, 1956 by the Apostolic Constitution *Hanc Apostolicam Sedem,* Pope Pius XII established an ecclesiastical province in Canada for Ruthenians of the Byzantine Rite. The Exarchate of Winnipeg was made the metropolitan see, with the Eparchies at Edmonton, Toronto and Saskatoon.—49, *AAS,* 262.

On September 27, 1956 in an address to the delegates to the International Convention of Promoters of the " Apostleship of Prayer " Pope Pius XII elaborated on a comparison between the " Apostleship of Prayer " and the Apostolate of the Laity.—48, *AAS,* 674.

Thomas A. Brockhaus, O.S.B., J.C.D.

Mount Angel Abbey,
St. Benedict, Oregon

CIVIL

PICKETING—FREE SPEECH

Under an Arizona statute unions were not free to picket an employer who had no labor dispute with the majority of his employees. The Arizona Supreme Court threw out the statute, holding that it was a violation of the Federal Constitution's guarantee of free speech. Baldwin vs. Arizona Flame Restaurant, Inc. Decided June 29, 1957.

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ATTORNEYS—PRIVILEGED COMMUNICATION

Attempts were made to force an attorney to answer questions based upon a privileged communication with his client. The communications had been secretly recorded without the knowledge of attorney or client. The New York Sup. Ct. App. Div. 1st Dept. held that the attorney need not answer the questions of a New York investigative agency on such matters. In re Consentio. Decided June 28, 1957.

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COMPULSORY BLOOD TEST—DRUNKENNESS

The California Supreme Court has held that the forcible taking of the defendants blood sample for the purpose of testing it for alcoholic content in a drunken driving case was not an unreasonable search or seizure. The blood test could be used in evidence in the trial. People vs. Duroncelay. Decided June 21, 1957. There is a dissent.

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SCHOOL INTEGRATION

The Federal District for Delaware ordered the public schools to effect racial integration no later than the beginning of the fall term of 1957, or at some time earlier. Evans vs. Buchanan. Decided July 15, 1957.

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MOVIE CENSORSHIP

The motion picture " Garden of Eden " depicted the activities of a nudist group in a private camp. The New York statute on ob-

scene and indecent films will not ban such a picture since no obscene or indecent behavior was exhibited. Mere nudity is not sufficient. Excelsior Pictures Corp. vs. Regents of University. Decided July 3, 1957 by N.Y. Ct. App. There is a strong dissent.

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INTERNATIONAL FLIGHTS

The Warsaw Convention put a limit upon the damages that are recoverable for injuries received while on an international flight. In the case of Piere vs. Eastern Air Lines, Inc. the Federal District Court for New Jersey held that the Convention was constitutional and did not violate the provision in the Constitution guaranteeing a jury trial. Decided June 6, 1957.

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CONTEMPT OF CONGRESS

The defendant was convicted of contempt for refusing to answer questions of the Senate Government Operations Committee's Subcommittee on Investigations. The questions asked pertained to the identification of union reports filed with the Labor department and the adequacy and accuracy of these reports. The conviction for contempt was sustained. U.S. vs. Brewster in District Court of the District of Columbia. Decided June 26, 1957.

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NON-COMMUNIST AFFIDAVITS

The issue arose when the Secretary of State refused to renew the passport of the applicant until he had filed the necessary non-Communist affidavit. On appeal to the Circuit Court for the District of Columbia, the court ruled that no constitutional rights were violated. There was a dissent in this case. Briehl vs. Dulles. Decided June 27, 1957.

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PRIVATE SANITARIUM

The doctrine of respondeat superior was invoked to hold the owners of a private sanitarium for injuries suffered by one of its patients. The injuries were sustained through the mal-practice of a doctor employed by the sanitarium. The case arose in Pennsylvania. Brown vs. Moore. Decided June 27, 1957 in Third Circuit of Penna.

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TAX EXEMPT CHARITY

The organization of a corporation engaged in the rehabilitation of unemployed aged persons, to engage in public relations work in their behalf, and to secure jobs for them is not a charity under section 501 (c) (3) of the Internal Revenue Code, but is a civic organization entitled to exemption under Section 501 (c) (4). Decided July 1, 1957, IRS Rev. Rul. 57-297.

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TEXAS STATUTE—DISCRIMINATION

The enactment of a Texas statute that withholds state funds from any school district which permits racial integration, and even penalizes officials who permit integration will not relieve school trustees of the duty to comply with the federal district court order of desegregation in their school district. Court Appeals for Texas. Borders vs. Rippy. Decided August 27, 1957.

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TENNESSEE STATUTE—DISCRIMINATION

A statute of the State of Tennessee entitled the School Preference Law authorized school boards to establish public schools which would be integrated, and attended by those who preferred integrated schools. The two school systems for whites and negroes were to remain intact. In the case of Kelly vs. Board of Education of Nashville the District Court held that this law does not relieve the Nashville School Board from the obligation of complying with the integration plan approved by the federal district court. The School Preference Law was held to be unconstitutional on its face. Decided September 6, 1957.

JOHN J. MCGRATH

Book Reviews

LE DROIT CANONIQUE PARTICULIER AU CANADA. Guy Arbour, S.S. Universitas Catholica Ottaviensis, Dissertatio ad Lauream, Series Canonica Nova, Tomus 3. Les Éditions de l'Université d'Ottawa, Ottawa, Canada, 1957. Pp. viii-167.

For students of Canon Law, there is a definite need for a book which concisely shows the relationship between the universal law of the Church and the particular law of a diocese, province or nation. To construct such a book requires intensive and continuous efforts, for diocesan synods, at least, are becoming more and more frequent, and books not containing the latest decrees and statutes are partially out of date.

It is with this in mind that the book of Fr. Arbour of the Society of Saint Sulpice must be judged. He has made every effort to bring his book up to the year 1957.

The method employed by the author falls naturally within the order of the Code of Canon Law. Where differences from the Code exist they are pointed out briefly and clearly. Exact determination is made concerning these differences and indication is supplied where they can be checked either in synods or councils. There are, of course, some topics which call for more extensive treatment and these are suitably discussed. Examples of these topics are the transmissions of mass stipends and the administration of Church property. Useful information is further supplied by listing the past synods and councils in Canada.

In his brief explanation of the concept of particular law, the author writes that if all the Bishops of Canada sign a juridical order (*mandement juridique*) particular law would result. This is at least misleading. A meeting of all the Bishops of a nation does not of itself constitute a plenary council, and their statements and recommendations do not have the force of conciliar legislation. If, however, the author means that all the Bishops in meeting take this occasion to enact separate and individual decrees, this would be particular law of obligation in separate and individual dioceses. Such obligation, of course, would be subject to the law concerning

Canadians who travel within their own country. Plenary legislation, on the other hand, would bind Canadians in the same circumstances.

The bibliography, while satisfactory, could have been improved by a wider inclusion of magazine articles. The index is serviceable.

DER KANONISCHE INFAMIEBEGRIFF IN SEINER GESCHICHTLICHEN ENTWICKLUNG. Benno Löbmann. Erfurter Theologische Studien, I. St. Benno-Verlag GMBH, Leipzig, 1956. Pp. 141.

One of the more interesting studies in matters of law is the study of infamy of law and of fact. Many scholars have given their best efforts to trace the development of infamy beginning with its position in Roman Law and continuing in the system of Canon Law. It is one of the fundamental tracts in penal law.

The latest study on this subject is published at Erfurt and is the first of a series of monographs grouped under the general heading of philosophical and theological studies. These studies, however, are limited to technical philosophy and theology. They include both law and history.

The important contribution of this book is its specific dealing with the doctrine of Suarez on infamy. Every one knows the excellent work of Suarez on censures and irregularities. In fact, the work of Suarez has laid the foundation for all subsequent volumes on these points. Hence, it is of importance to have at hand explanations and commentaries of his doctrine concerning infamy. Students of Canon Law should be grateful to the author.

Other scholars are not neglected. Special notice is taken of the doctrine of Passerini.

The bibliography is satisfactory, but there is no division between reference works and articles. Two disserations of The Catholic University of America are included. These are the works of Dr. Rodimer on the canonical effects of infamy of fact and of Dr. Tatarczuk on infamy of law. There are two indices, one of persons, the other of topics. The latter is particularly well constructed.

AUFHEBUNG DER EHELICHEN LEBENSGEMEINSCHAFT. Josef Pfab, C.SS.R. Otto Müller Verlag, Salsburg, 1957. Pp. 234.

The author of this book received his Doctorate in Canon Law in Rome in 1954. Since then he has been teaching in one of the Redemptorists schools in Europe. The publisher of this book is new to the pages of *The Jurist*. The reviewer hopes that both the author and his publisher will continue their efforts in serving the available public by writing and publishing works calculated to encourage and stimulate thought on moral and religious problems of the day.

This book is a survey of both doctrine and opinion on the important phases of marital life. The obligation of living together is stressed. Canon Law and, generally, the rules of Moral Theology are examined and in addition to these points civil law is investigated. The whole thesis of community life among married couples is expertly presented to the reader.

There is every reason to believe that this book will be widely read by those who are conversant with the German language. The hope must be entertained that in time translations in different languages will be available.

Students of Canon Law will be particularly interested in the analysis of Gratian's doctrine on the separation of consorts.

While the bibliography does not contain many works other than Latin and German, the division of the bibliography is excellent. Separate parts of this book are given separate bibliographies. Repetitions of the titles of books are found wherever useful. The index is satisfactory.

TRADITIO. Studies in Ancient and Medieval History, Theology and Religion. Volume XII. Fordham University Press, 1956. Pp. 634.

The latest number of *Traditio* continues its excellent series of articles. But there is little of particular interest to students of law, canon or civil. The articles offered have a comparatively high cultural value, and they give fine evidence of serious research.

There are, however, two items of interest to students of Canon Law. First, a select bibliography (1951-1956) suggested by Dr.

Brian Tierney. This is reliable and useful bibliography constructed by a competent scholar.

The other item is the report of Dr. Stephan Kuttner on the progress of the Institute of Research and Study in Medieval Canon Law. This Institute which began its work under favorable auspices gives every indication of flourishing. It should develop into an Institute of the highest academic caliber. Organizations of this kind cannot in any sense be self-supporting, and the widest support of benefactors is enthusiastically indicated. Scholars from every part of the world will eventually be included among the academic personnel of the Institute, and it bespeaks much for the interest of the United States that the Institute is located on the campus of The Catholic University of America. Nothing in recent years has so well coordinated the research and study of medieval Canon Law.

DE POTESTATE A ROMANIS PONTIFICIBUS IN CONSTITUTIONIBUS CANONIS 1125 EXHIBITA. P. Ludwinus Van Dongen, SS.CC. Officium Libri Catholici—Catholic Book Agency, Romae, 1954. Pp. 62.

This is an excerpt from a doctoral dissertation submitted by the author to the Mission Institute attached to the Urban University in Rome. It is better than most excerpts, for it gives a reasonably extensive treatment of the main point discussed in the entire dissertation. But it is not, of course, as satisfactory a presentation of the subject as would be found in the complete dissertation.

There existed for considerable time a useful discussion concerning the kind of power used by the Pope in the dissolution of pagan marriages. Some said the power used was an extension of but substantially the same used in the Pauline privilege. Others sought this power in the plenitude of power enjoyed by the Supreme Pontiff. It was the purpose of the author to examine these positions and, if possible, establish a definite choice.

The author discusses papal power at length. He gives equal effort to the various aspects of the question involved. He admits that the question is difficult to solve, and that at one time, at least, both contentions were probable. He claims, however, that the Pontiffs were not clearly conscious of extending the Pauline privilege,

which demanded certain conditions before it could be operative. Moreover, the author demonstrates from constant jurisprudence that these conditions can be dispensed, so that the Pauline privilege is actually used without specific reference to the plenitude of papal power. The author leans toward this position as a solution of the problem of the dissolution of pagan marriages.

There is a short bibliography but no index.

TRIDENTINE SEMINARY LEGISLATION, ITS SOURCES AND ITS FORMATION. James A. O'Donohoe, A.B.,J.C.D. Bibliotheca Ephemeridum Theologicarum Lovaniensium, Vol. IX, 1957. Pp. vi-194.

Historians agree that among the items that needed reform by the Council of Trent was education for the sacred ministry. This had fallen off to an alarming degree. Several attempts had been made to restore both education and discipline, but it was not until the twenty-third session of the Council of Trent that a pertinent decree was ratified. This decree was subsequently embodied for the most part in the Code of Canon Law (cc. 1352-1371).

The author's primary purpose in constructing his dissertation is to show that the Council of Trent was aware of the need for reform, but that for various reasons decisive action was deferred. It was, perhaps, well that for a time action was deferred, for the actual legislation was productive of the desired results. It has stood the test of time as modern legislation indicates.

As the author clearly demonstrates, the fundamental concepts of the legislation of the Council of Trent are based on the regulations of Cardinal Pole for the clergy of England. Perhaps not equal to this source but certainly of directive value were the rules drawn up by St. Ignatius for the German College in Rome. Ample credit must be given to Cardinal Pole and St. Ignatius for the basis upon which clerical education and discipline were restored.

The various points which constitute the foundation and development of the legislation of the Council of Trent are all properly presented and adequately discussed. Presumably, this is the author's first book, for it reveals the skeleton upon which he grafts his material. His future works will undoubtedly conceal the bare frame-

work of his ideas, so that the whole book will be more in the line of literature and yet be not less informative. Future editions of this dissertation could be improved with readable numbers in the footnotes. The present numbers are a strain.

There is an excellent bibliography. It should satisfy all readers. Possible criticism of methods of citation is anticipated by the author's statement that his method is the one approved by the Professors of Methodology in the Catholic University of Louvain. The index is not so well constructed. It consists mainly of names with little indication of topics.

Edward Roelker

Chronicle

The 100th anniversary of the American College at Louvain was marked by the ordination of 16 priests by Archbishop O'Brien of Hartford and a Pontifical Mass of Thanksgiving by Bishop McNulty of Paterson. Honorary doctorate degrees were conferred upon Bishop McVinney of Providence and Auxiliary Bishop Sheen of New York.

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Monsignor William McManus who served for 12 years as assistant director of the Education Department of the NCWC was appointed superintendent of the school system of the Archdiocese of Chicago. He is succeeded in the NCWC post by Rev. Francis Hurley of San Francisco.

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Monsignor Berube, P.A., of Ogdensburg has been reappointed Vicar General by Bishop Navagh.

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The Very Rev. Vincent T. Swords, C.M., superior at Niagara University, has been named President of the University.

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Monsignor William Culhane has been appointed acting rector of Mt. St. Mary's Seminary, Emmitsburg, Md., succeeding Monsignor Joseph O'Donnell who returned to duties in the Archdiocese of Philadelphia.

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Monsignor Maginn of Albany has been named Auxiliary Bishop to Bishop Scully of Albany. Two new Auxiliary Bishops have also been appointed to assist Archbishop Boland of Newark. They are Bishops-elect Stanton and Curtis.

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The Very Rev. William D'Arcy, O.F.M.Conv., has been elected Provincial of the Immaculate Conception Province of the Friars Minor Conventual.

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The Very Rev. Basil Heiser, O.F.M.Conv., was elected Provincial of Our Lady of Consolation Province of the Friars Minor Conventual.

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The Rev. Joseph Hogan, C.M., was named to the new post of executive vice president of St. John's University.

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The Very Rev. Thomas McLaughlin was elected for a second term as Superior General of the Mill Hill Fathers in a chapter held in St. Louis.

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A farewell review by the United States Navy at Norfolk, Va., honored Rear Adm. (Monsignor) Maurice Sheehy as he retired from the Service after 20 years. Monsignor Sheehy, former head of the religious education department at The Catholic University of America has been appointed pastor of Immaculate Conception Church, Cedar Rapids, Iowa.

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A century of service to the Church by the Capuchin Order in the United States was honored in August when Archbishop Meyer of Milwaukee offered a Pontifical Mass at Mount Calvary, Wisconsin.

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Bishop McVinney of Providence was appointed an Assistant at the Papal Throne by Pope Pius XII.

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The Holy See erected the Military Vicariate of the United States to the status of a diocese with the Archbishop of New York at present and in the future as the Military Vicar.

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On September 4, Bishop James Casey was installed as sixth Bishop of Lincoln, Nebraska.

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The Rev. Patrick Sullivan, S.J., is the newly named assistant executive secretary of the National Legion of Decency.

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The Most Rev. John B. Janssens, S.J., General of the Society of Jesus, celebrated his 50th anniversary of entrance into the Society of Jesus on September 23.

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Several priests of the Archdiocese of St. Louis have been recipients of papal honors. The following ones have been named Domestic Prelates: George Dreher; Anthony Esswein; John Martin; Victor Suren; and Alphonse Westhoff. Fathers George Lodes, Joseph Michalski, and Edward O'Meara were named Papal Chamberlains.

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The following priests of the Archdiocese of St. Paul have been named Domestic Prelates: Gerald Baskfield; William Brand; William Busch; James Cecka; Richard Doherty; Arthur Durand; Joseph Ettel; John Foley; James Foran; Matthias Gillen; Francis Gilligan; George Keefe; Andrew Koller; Louis McCarthy; Rudolph Neudecker; Gerald O'Keefe; Louis Pioletti; Cyril Popelka; Owen Rowan; Raymond Rutkowski; George Ryan; James Ryan; Laurence Ryan; Alphonse Schladweiler; Thomas Shanahan; Joseph Siegienski; Laurence Wolf; and George Zialovsky.

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The following priests of the Diocese of Cleveland have been named Domestic Prelates: James Duffy; John Gallagher; Edward Hannon; Charles Hoot; Edward Kickel; Stanislaus Podbielski; William Thorpe; and Harry Swisler.

The following priests of the same dioecse have been named Papal Chamberlains: Joseph Feghali; Paul Hallinan; Thomas Kelly; and Michael Trivisonno.

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Father Edward Burns of the Diocese of El Paso has been named a Domestic Prelate.

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Monsignors Edward Burke and Malachy Foley of the Archdiocese of Chicago have been raised to the dignity of Protonotary Apostolic.

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The following priests of the Archdiocese of Chicago have been named Domestic Prelates: Thomas Burke; Stanislaus Czapelski; Leo Diebold; D. A. Diederich; Peter Engeln; John Halligan; James Hardiman; Leo Hartke; James Hishen; Jeremiah Holley; John Houlihan; Henry Jagodzinski; James Kiely; Harry Koenig; E. O. Leiser; James Magner; Patrick Molloy; Vincent Moran; Cletus O'Donnell; George Paskus; Stanley Piwowar; Robert Stoeckel; A. Szczerkowski; Harold Trainer; Raymond Zock; and John Zwierzchowski.

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The following priests of the Archdiocese of Chicago have been named Papal Chamberlains: Bernard Brogan; Francis Byrne; Daniel Cantwell; Joseph Connerton; John Egan; Joseph Fitzgerald; John Gleason; Robert Hagarty; George Halpin; John Kelly; Joseph Lahart; Lawrence Lynch; Donald Masterson; Ignatius McDermott; William McNichols; Martin O'Day; John Owczarek; John Quinn; William Quinn; Edward Roche; and Raymond Vonesh.

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The following priests of the Archdiocese of New York have been named Protonotaries Apostolic: William Kelly; Joseph Kerwin; and Edward Loehr.

The following priests of the same Archdiocese have been named Domestic Prelates: Patrick Mackin; and John Monaghan.

Newly appointed Papal Chamberlains of the same Archdiocese are: Terence Cooke; Daniel Hurley; John Kelly; and James Wilson.

Romaeus W. O'Brien, O.Carm.

The Canon Law Society of America
Midwest Regional Conference Meeting

The Midwest Regional Conference of the Canon Law Society of America will hold its annual spring meeting on May 27 and May 28, 1958, at the Edgewater Hotel in Madison, Wisconsin. Anyone wishing to participate in this meeting may write to the Rev. Raymond E. Klaas, P. O. Box 111, Madison 1, Wisconsin, for desired accommodations.

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